



<b><u>Decision Ref:</u></b>	2022-0260
<b><u>Sector:</u></b>	Banking
<b><u>Product / Service:</u></b>	Personal Loan
<b><u>Conduct(s) complained of:</u></b>	Mis-selling (banking)
<b><u>Outcome:</u></b>	Partially upheld

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

The Complainant entered into several moneylending agreements with the Provider. The complaint concerns the Provider's conduct in offering these loans to the Complainant.

#### **The Complainant's Case**

In her Complaint Form, the Complainant refers to a letter dated **23 June 2019** as containing an explanation of her complaint against the Provider. The Complainant continues by saying she feels that she should not have been sold the loans the subject of this complaint and that she was never asked for any proof of income or outgoings until very recently. The Complainant says she believes she has been caught up in a cycle of Provider loans, that she has been unable to escape.

The Complainant's letter dated **23 June 2019** states, as follows:

*"I have been struggling financially for a long time, I work over 20 hours a week and I receive FIS, but I just could never get my head above water.*

*This gave way recently, so I went to Mabs just to get some advice on what I am doing wrong. The person I spoke to asked for all my details and we spoke about different things. The one thing that came up was my borrowing with [the Provider].*

*Many many years ago I got a loan from them and ever since I have just been caught up in a cycle of borrowing and paying off with another loan. I suppose I didn't realise how bad it was until now and Mabs were shocked. Up until about a year ago they have never looked for proof of income or asked much about it. I have struggled with it for years. When I get really stuck I borrow a larger loan, pay off the balance of the one before so that the payments stay the same*

*After my meeting with the advisor I wrote to [the Provider] but they just sent me a letter basically saying it was all good with them and there was no issue.*

*I am fully aware that I have taken these loans out but [the Provider] should never had been lending me this money and it has been a constant battle to keep my head above water.*

*I have enclosed all my loan books and correspondence with [the Provider].*

*Do you believe they were right to keep me in this cycle of high rate lending?*

*I still have 2 loans with them at a cost of €100 per week, I earn about €200 - €250 per week and receive FIS. I have the upto date books as I need to continue to service it.*

*I feel [the Provider] have played a large part in my constant struggle over the last years."*

In resolution of this complaint, the Complainant states, in her Complaint Form, as follows:

*"I would like the ombudsman to look at the way these loans were given and often I was given a loan to pay off a previous loan, I believe the amount of interest I have paid over many years should be paid back in full or partially."*

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

The Provider says it uses a 'Customer Details Form' ("CDF") to collect income and expenditure information for a customer, completed in the customer's home. The Provider says these forms are then signed by the customer to confirm that they are a true reflection of the customer's circumstances. More recently, the Provider says, in **2018** this creditworthiness assessment has been completed using a digital income and expenditure form which is electronically signed by a customer.

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The Provider says that customers are not pressurised in any way to take out credit, and borrowing is completely a customer's choice. The Provider says creditworthiness and affordability are assessed with every loan taken out and credit is only provided where it is affordable. The Provider says that details on how to withdraw from agreements are provided at the time of lending and the Complainant has never used this opportunity to withdraw from her agreements. The Provider says its agents also provide customers with details on how they can complain at the time of lending, and again, the Provider says this is the first complaint that has been raised by the Complainant.

### **Jurisdiction**

By letter dated **23 June 2019** (received by this Office on **26 June 2019**) the Complainant wrote to this Office questioning the Provider's conduct in respect of a number of moneylending agreements entered between the parties. By letter dated **9 August 2019**, this Office confirmed receipt of the complaint. The Complainant submitted a Complaint Form to this Office dated **13 August 2019**, received on **23 August 2019**.

As of **26 June 2019**, when the complaint was received by this Office, the Complainant had entered into a number of discrete moneylending agreements with the Provider beginning on **4 December 2009** with the most recent loan being on **21 March 2019**. Following the making of the complaint to this Office, the Complainant entered into further moneylending agreements with the Provider.

On reviewing the various moneylending agreements, these agreements appear to have been for amounts of between €500.00 and €1,000.00 with repayment terms of 26 weeks, with the exception of two loans in **October 2010** and **August 2011** which had repayment terms of 52 weeks.

By letter dated **5 November 2019**, this Office wrote to the Complainant advising that in the context of **Section 51** of the 2017 Act (Time Limits) this Office would investigate the Provider's conduct in respect of the loan agreements entered into, from **2014** onwards.

The Complainant considers that the Provider should not have sold her the loans the subject of this complaint. She makes a complaint in respect of each individual moneylending agreement entered into with the Provider. The six-year time limit contained in **Section 51(1)** of the 2017 Act, begins to run from the date of the conduct complained of (though it is suspended for the period during which the matter is the subject of the financial service provider's internal dispute resolution procedure (IDR)). It would appear that the earliest date in respect of which the Provider's conduct can be examined as part of this complaint is on or after **10 June 2013**.

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Having considered the time limits applicable to this complaint and the various moneylending agreements, I am of the view that the earliest moneylending agreement that can be investigated by this Office is the moneylending agreement dated **27 June 2013**.

**Section 44(2)(b)** of the 2017 Act states, in essence, that a complaint may not be made where a financial service provider has not been given a reasonable opportunity to deal with the matter. In addition, **Section 50(3)(a)** of the 2017 Act states that this Office shall not investigate a complaint where the internal dispute resolution procedures required under **section 54** have not been complied with.

In this respect, I note that a formal complaint was made to the Provider by letter dated **29 April 2019** and a formal response issued dated **16 May 2019**. The Complainant entered further moneylending agreements following her complaint of **29 April 2019** and these did not form part of her complaint.

In light of **Section 44(2)(b)** and **Section 50(3)(a)** of the 2017 Act, this Office will not investigate any moneylending agreements entered after **29 April 2019**, as part of this complaint. In this respect, it appears the last moneylending agreement entered into before **29 April 2019**, is dated **21 March 2019**. Accordingly, the conduct examined as part of this complaint is the Provider's conduct regarding the selling of the Complainant's loans arising on or after **10 June 2013**, and up to **29 April 2019**.

### **The Complaint for Adjudication**

The complaint is that the Provider mis-sold a number of loans to the Complainant between **10 June 2013** and **29 April 2019** and did not seek proof of income in respect of all loan facilities.

### **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 **12 July 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.

### ***Background***

I note that the Complainant signed a 'Moneylending Agreement' dated **27 June 2013** for an amount of €500.00, to be repaid at €25.00 per week over a 26-week term, and a number of similar agreements were entered into between the parties up to **21 March 2019**. The purpose of the loan was recorded as '**Personal Use**'. In terms of suitability, on the top right corner of the Moneylending Agreement, two options regarding suitability were set out, as follows:

*"This product is suitable for the customer because:*

*The customer requires the flexibility of a cash loan at our lowest available cost.  
(our shorter term loan)*

*The customer requires the flexibility of a cash loan and though this option is not the lowest in terms of overall cost, the weekly rate best suits the customer's budget.  
(our longer term loan)"*

Each of the Moneylending Agreements which are the subject of this complaint, contain this suitability section and the first of the above two options was selected in respect of each agreement up to the Moneylending Agreement dated **15 February 2018**. However, due to the manner in which copy documentation has been supplied by the parties, it is not clear whether any such box was ticked as having been selected, in respect of the subsequent agreements.

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Keeping with the **June 2013** Moneylending Agreement, under the heading '**Description of the main features of the credit product**', the agreement sets out the type of credit, total amount of credit, conditions governing drawdown, duration of the agreement, instalments, and total amount to repay. Under the heading 'Cost of the credit', the borrowing rate was set out (as 60% annual fixed rate) together with the annual percentage rate of change (APR) (as 187.20%) which was accompanied by a brief explanation of APR.

Beneath the above headings and just above the signature pane, the following information was provided:

***"Right of Withdrawal***

*You have the right to withdraw from this credit agreement within a period of 14 calendar days from the date of this agreement. You can do so by ringing the Contact Centre on [phone number] or by writing to us at the [County name redacted] address above. You must then repay the total amount of credit (shown above) plus interest at the daily rate shown on the right for each day from the date of the agreement to the date of payment, without undue delay and no later than 30 calendar days after you tell us of your withdrawal.*

**WARNING: THIS IS A HIGH-COST LOAN** *More terms overleaf. Please read carefully. Make sure you understand them before you sign.*



On the reverse side of the agreement, information was set out regarding:

Missing payments  
Early Repayment  
Statement of Account  
Financial Ombudsman,  
Financial Regulator and  
contact details for the Money Advice and Budgeting Service (MABS).

I note that the terms and conditions were then set out which stated, amongst other things, as follows:

*"This is an agreement for home collection credit. Repayments will be collected weekly from your home.*

*Entering this agreement also means that:*

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*You must*

- [...]
- *notify us of any material change to the information you have given us as soon as possible*

*You agree*

- *to pay us the instalments set out overleaf*
- [...]

*You declare*

- *that you have received a true copy of this agreement*
- *that the money lent is for your own personal use only*
- *that the information you have given us is true and correct at the time of signing the agreement*
- *that you have read and agree to be bound by the terms and this agreement*
- *that you have received a repayment booklet*

*Generally*

- [...]
- *If you have more than one loan with us and you are unable to make full contractual repayments on all your loans, you can tell us how you want the reduced payment to be applied between your loans. If you do not tell us, we will apply the repayments in proportion to the amounts due under each loan.*

[...]

*We are:*

- *entitled to rely on the information provided by you, unless it is manifestly inaccurate or incomplete or we are aware that the information is inaccurate or incomplete."*

I note that a 'Standard European Consumer Credit Information Form' ("CIF") also accompanied the June 2013 Moneylending Agreement which essentially contained a summary of the information in the Moneylending Agreement. I further note that the Complainant also signed a 'Current Customer Details Form' ("CCDF") dated **27 June 2013**. At Section E of the CCDF, the Complainant's weekly income and weekly outgoings (under four sub-categories) were recorded, to calculate her weekly disposable income. At Section F, the Complainant's residential status, employment status and occupation were recorded.

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Thereafter, I note that further Moneylending Agreements dated **5 September 2013** and **19 December 2013** were entered into between the parties. I note that each of these loans comprised a Moneylending Agreement, CIF and CCDF. In respect of the September and December CCDFs, I note that at Section E, the agent was required to tick 'Yes' or 'No' as to whether the Complainant's income had been verified. In each instance, 'Yes' was selected, and a payslip was referenced.

In **2014**, the Complainant entered Moneylending Agreements dated **13 February 2014, 29 March 2014, 7 June 2014, 24 July 2014** and **11 September 2014**. I note that each of these loans comprised a CIF and CCDF. I note from the **24 July 2014** Moneylending Agreement, the Complainant's employment status on the CCDF changed from part time to full time.

In **2015**, the Complainant entered Moneylending Agreements dated **26 March 2015, 7 May 2015, 11 June 2015, 17 September 2015, 19 November 2015** and **30 December 2015**. I note that each of these loans included a CCDF. However, it appears the parties have provided a CIF only in respect of the June and September loans.

In **2016**, the Complainant entered Moneylending Agreements dated **31 March 2016, 30 June 2016, 25 August 2016** and **20 October 2016**. CCDFs have been provided in respect of three of these loans except the agreement dated **25 August 2016**. It is also unclear whether any CIFs were provided to the Complainant in respect of these loans. It appears that the 'Outgoings' section of the CCDF was expanded from around the June 2016 Moneylending Agreement, to six sub-categories which included a category in respect of 'Current [Provider] rate'.

In **2017**, the Complainant entered Moneylending Agreements dated **26 January 2017, 16 March 2017, 4 May 2017, 8 June 2017, 3 August 2017, 19 October 2017** and **7 December 2017**. It also appears, from the available documentation, that the Complainant was provided with a 'Product Information' document from **October 2017**. Further to this, the parties have furnished CCDFs and CIFs in respect of these loans except for the January CCDF, and January and March CIFs.

In terms of the loans advanced during **2017**, it appears that the 'Proof of Income' section of the CCDF changed. In this CCDF, the Provider agent was required to sign the following declaration:

*"I confirm that I have seen the customer's original proof of income documents."*

It appears from the August 2017 CCDF, that this was the first occasion on which the Provider retained a copy payslip.

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In terms of Outgoings, it appears that from the **4 May 2017** CCDF a 'Buffer' of €15.00 was incorporated into the weekly outgoings' calculation.

In **2018**, the Complainant entered Moneylending Agreements dated **15 February 2018, 2 August 2018** and **20 December 2018**. It appears the Complainant was provided with a CIF for the August and December loans. A CCDF has been supplied in evidence in respect of the February loan and a spreadsheet document has been provided in respect of the August and December loans titled '**Affordability**'. It appears the Provider retained copy payslips in respect of these loans. In terms of the Affordability spreadsheet, this document appears to contain income related details by reference to three payslips and details of outgoings under 15 sub-categories, including sub-categories for 'Housing Costs/Mortgage payments' and 'Loan Repayments/Financial Commitments'.

In **2019**, the Complainant entered a Moneylending Agreement dated **21 March 2019**. It appears that a CIF was provided in respect of this loan. The Provider has also furnished a spreadsheet document in respect of this loan titled 'Affordability'. It appears the Provider retained a copy payslip in respect of this loan.

The Complainant made a formal complaint to the Provider on **29 April 2019**. In its Final Response letter dated **16 May 2019**, the Provider advised, as follows:

*"I have reviewed your 29 loan agreements issued within the last six years. 26 of your loans were assessed by confirming employment details and documenting detail of your income and outgoing information with proof of income. I have reviewed the Customer Detail Forms, which reflect you was (sic) in employment and had suitable disposable income in which to make repayments. You have signed the documents to reflect the information provided at that time was a true reflection of your financial circumstances.*

*Three of the loans issued were assessed using a system called Lending App. This involved details of your income and outgoing information being collected and entered electronically on your agent's device. Lending App features a built-in control whereby an application will be rejected automatically if a loan is deemed to be unaffordable.*

*We appreciate there may be concerns where a customer fails to declare certain outgoings, whether intentionally or otherwise. To protect against any such understatement the Lending App makes use of modelled outgoing based on data provided by the Office of National Statistics and pulls through financial commitments from the credit bureau data when assessing affordability. After these additional considerations the loans were deemed to be affordable.*

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*Prior to issuing further loans your agent would also have been expected to review payments made to previous agreements. I have reviewed the payment history and can confirm there would have been no reason to suspect a further loan would not be manageable at the time we lent to you.”*

In the Complainant’s letter of **23 June 2019**, she states that:

*“Up until about a year ago they have never looked for proof of income or asked much about it. I have struggled with it for years. When I get really stuck I borrow a larger loan, pay off the balance of the one before so that the payments stay the same*

*[...]*

*I am fully aware that I have taken these loans out but [the Provider] should never had been lending me this money and it has been a constant battle to keep my head above water.”*

In a submission dated **29 January 2021**, the Complainant states:

*“I also feel that [the Provider] also have ‘internal controls’ that should have been a flag to anyone in this financial sector. As I look back over my own paperwork, I have no idea how we coped financially, but it was always robbing Peter to pay Paul.”*

In response to the Provider’s Complaint Response, the Complainant states in a submission dated **1 February 2021** that:

*“[I]n many parts [the Provider] are correct, I took out these loans willingly, I have never said anything difference and I also signed those forms not really caring what figures were on them as long as I could get the money to pay off electric, gas, and all other bills that had fallen behind whilst I paid €400-600 per month on [Provider] loans. It starts in a very simple cycle, my washing machine broke and I didn’t have money to buy a new one, so a friend passed me on details for [the Provider]. In no time at all I had 3 loans costing me €150 per week and only earning €250 per week.*

*[...]*

*This complaint was always about the fact I should never have been given those loans, their lack of checks and scruples caused me to have a serious financial reliance on these loans.*

*[...]*

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*The trust on an agent to check things correctly before agreeing loans with no checks in the background is very dangerous.”*

The Complainant also made certain observations in respect of the Provider’s Complaint Response in a document accompanying the above submission, as follows:

*“Customer Details- On the excel sheet details are not complete, my employment is not registered on this sheet. No details of other [Provider] loans running alongside the ones being given, so the ‘disposable income’ does not take into account other loans being paid TO THEM at this time. I was often paying multiple loans sometimes as many as 3 at one time which was €600 per month.*

*Payment History- Payments were always on time, much easier to put a bill to the bottom or the pile than ignore someone coming to your house or place of work.*

*Affordability- On the excel sheet showing affordability there are many red flags. At all times, specifically when the new system came in and was recorded, I was coached by the agent and worked out what numbers worked on the forms to get the loan agreed. It was in his best interest to get my loan over the line. This is a huge issue for [Provider] that it’s in an employee’s best interest to agree loans.*

- 1. Only 6 out of the 29 loans given were documented. On each one shown the out goings are clearly not realistic and yet were never questioned or no proof of outgoings was EVER asked for. Details changed on every loan and were not in any way possible for a woman living with 3 dependants.*
- 2. Loan 4 out of 6 was the first time I was ever asked for additional proof of income, before the recording began [the Provider’s agent] explained exactly what I had to say and what figures worked. If any of this audio is listened back it is clear that there was never any need for me to think about figures or find bills because it was all worked out prior to him turning on recording.*
- 3. Is it possible to see similar sheets of the other 23 loans? I believe they will show how mismanaged my account was.*
- 4. The amount of power each agent has without recourse or proof is not acceptable. If [the Provider] had inhouse checks then they should have picked up on the fact that I was mis sold these loans-it is not normal for any lending company to give that many loans and that it was being calculated on unrealistic figures without questioning it or looking for suitable proof of outgoings. [...]*

*I agree, customers are not ‘pressurised’ into borrowing, but by giving loans that are unaffordable you are putting them in a position of having the need to borrow again.*

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*I do not believe I am the only person to be caught in this cycle. There were several times that I was given a loan that was to pay off the end of a previous loan, in logic I am paying twice the amount of interest on the money I am borrowing. For example, if I had €300 outstanding on a previous loan I would get a loan for €1000, and receive just €700.”*

### **Legislative and Regulatory Overview**

A ‘moneylending agreement’, such as the agreements which the Complainant entered into with the Provider, between **2013** and **2019**, is defined in section 2 of the **Consumer Credit Act, 1995** (“the CCA 1995”) as:

*“a credit agreement into which a moneylender enters, or offers to enter, with a consumer in which one or more of the following apply:*

*(a) the agreement was concluded away from the business premises of the moneylender or the business premises of the supplier of goods or services under the agreement,*

*(b) any negotiations for, or in relation to the credit were conducted at a place other than the business premises of the moneylender or the business premises of the supplier of goods or services under the agreement,*

*(c) repayments under the agreement will, or may, be paid by the consumer to the moneylender or his representative at any place other than the business premises of the moneylender or the business premises of the supplier of goods or services under the agreement, or*

*(d) where the total cost of credit to the consumer under the agreement is in excess of an APR of 23 per cent., or such other rate as may be prescribed;”*

The term ‘moneylender’ is defined as *“a person who carries on the business of moneylending [...]”*. The term ‘moneylending’ is defined as *“credit supplied by a moneylender to a consumer on foot of a moneylending agreement”*.

While the Provider is no longer operating in the Irish market, at all times material to this complaint, the Provider was a licensed moneylender.

The Central Bank of Ireland’s **Consumer Protection Code for Licenced Moneylenders (January 2009)** (“the Code”) applies to moneylenders licensed under the CCA 1995. Chapter 1 of the Code sets out a number of ‘General Principles’, including the following:

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*“A moneylender must ensure that in all its dealings with **consumers** and within the context of its licence, it:*

- 1 acts honestly, fairly and professionally in the best interests of its **consumers** and the integrity of the market;*
- 2 acts with due skill, care and diligence in the best interests of its **consumers**;*
- 3 does not recklessly, negligently or deliberately mislead a **consumer** as to the real or perceived advantages or disadvantages of any product or service;*
- 4 has and employs effectively the resources and procedures, systems and control checks that are necessary for compliance with this Code;*
- 5 seeks from its **consumers** information relevant to the product or service requested;”*

Chapter 2 of the Code sets out ‘Common Rules for Moneylending’. In terms of ‘**Knowing the Consumer**’, Chapter 2 states that:

*“10 Before providing a product or service to a **consumer**, a moneylender must gather and record sufficient information from the **consumer** to enable it to provide a recommendation or a product or service appropriate to that **consumer**. The level of information gathered should be appropriate to the nature and complexity of the product or service being sought by the **consumer**, but must be to a level that allows the moneylender to provide a professional service.*

*This requirement does not apply where the **consumer** has specified both the product and the moneylender and has not received any advice.*

*11 A moneylender must gather and record details of any material changes to a **consumer’s** circumstances before providing that **consumer** with a subsequent product or service.*

*[...]*

*13 A moneylender must endeavour to have the **consumer** certify the accuracy of the information he/she has provided to the moneylender. Where the **consumer** declines to do so, the moneylender must note this on the **consumer’s records**.”*

In terms of '**Suitability**', the Chapter 2 states that:

*"15 A moneylender must ensure that, having regard to the facts disclosed by the **consumer** and other relevant facts about that **consumer** of which the moneylender is aware, any product or service offered to a **consumer** is suitable to that **consumer**.*

*This requirement does not apply where the **consumer** has specified both the product and the moneylender and has not received any advice.*

*16 Before providing a product or service to a **consumer**, a moneylender must prepare a written statement setting out the reasons why a product or service offered to a **consumer** is considered to be suitable to that **consumer**.*

*The moneylender must give a copy of this written statement to the **consumer** and retain a copy.*

*This requirement does not apply where the **consumer** has specified both the product and the moneylender and has not received any advice."*

The **European Communities (Consumer Credit Agreements) Regulations 2010** ("the Regulations") set out certain requirements in respect of credit agreements, which include the type of moneylending agreements which are the subject of this complaint. In particular, Regulation 8(1) sets out the type of pre-contractual information to be given to a consumer and Regulation 13(3) sets out the information to be included on a credit agreement. Regulation 8(2) sets out the requirement for a Standard European Consumer Credit Information. In terms of affording a consumer an opportunity to assess the suitability of a credit agreement, Regulation 8(10) states that:

*"(10) A creditor or credit intermediary shall provide adequate explanation to a consumer to enable the consumer to assess whether a proposed credit agreement is appropriate to his or her needs and financial situation, where appropriate by explaining—*

*(a) the Standard European Consumer Credit Information,*

*(b) the essential characteristics of the products proposed, and*

*(c) the specific effects they may have on the consumer, including the consequences of default in payment by the consumer."*

Regulation 11(1) imposes the following obligation on a creditor to assess the creditworthiness of a consumer:

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*“11. (1) Before concluding a credit agreement with a consumer, a creditor shall assess the consumer’s creditworthiness on the basis of sufficient information, where appropriate obtained from the consumer and, where necessary, on the basis of a consultation of the relevant database.”*

I note that the Central Bank of Ireland issued an ‘Industry Letter’ to licensed moneylenders dated **1 March 2013** following an inspection of certain moneylenders. In respect of Regulation 11, this letter stated, as follows:

*“Firms are reminded that the responsibility rests with the firm to ensure compliance and to maintain evidence in order to demonstrate how they have complied with the Regulations. While the Central Bank acknowledges that the home collection industry may lend itself to building ongoing relationships with consumers, such an ongoing relationship should not be solely relied upon when assessing a consumer’s creditworthiness. Furthermore, this and all other conclusions made during the assessment of creditworthiness should be documented by the firm, for each loan issued.*

*A firm must consider all existing loans and any arrears a consumer may have when assessing creditworthiness, and document same. [...]*”

### **Analysis**

The Complainant considers that the moneylending agreements she entered into with the Provider, and which are the subject of this complaint, were mis-sold to her.

On reviewing the Moneylending Agreements, the CIFs and the CCDFs, it appears to me that the information required by Regulation 8(1), 8(2) and 13(3) was contained in these documents. I also note that the Complainant appears to have signed each of the Moneylending Agreements and the CCDFs. As a result, I am satisfied that the Complainant was provided with sufficient information regarding the type of credit agreement she was entering, for the lending facilities she had sought, and the risks associated with these agreements.

In her letter of **23 June 2019**, the Complainant states that it was not until a year before this letter, that the Provider began to seek proof of income. Likewise, in her Complaint Form, the Complainant says it was not until very recently that she was asked for proof of income or outgoings. I am not satisfied however that this contention is borne out by the evidence, as information regarding income and expenditure appears to have been obtained from the Complainant and recorded on CCDFs, and using the Lending App.

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I also note that the Complainant's income appears to have been verified by reference to her payslips, however, copy payslips do not appear to have been retained by the Provider until around **August 2017**.

As regards the outgoings recorded on the CCDFs and Affordability spreadsheets, the outgoings sub-categories appear to aggregate several items of expenditure which come under the respective sub-categories. However, I am not satisfied that the Provider was required to verify each item of expenditure falling within these sub-categories.

As details of outgoings were obtained from the Complainant, I am satisfied it was reasonable for this information to be recorded on the CCDF and the Affordability spreadsheets without the Provider having to verify each item of expenditure. It is also important to note that each CCDF appears to have been signed by the Complainant. I also note from the document accompanying the Complainant's submission of **1 February 2021** that the Complainant appears to have been aware of the information recorded on the Lending App.

On reviewing the CCDFs from **June 2013** to **June 2017**, the Complainant's weekly income was recorded as €350.00, €400.00, €450.00, €500.00 or €550.00, with the most frequent weekly income amounts being €400.00 and €450.00. While payslips were referenced as the proof of income during this period, it is not entirely clear what the Complainant's total weekly income was during this period. In this respect, I note that payslips were referenced on the CCDF in one of the three ways: 'Payslip'; 'Payslip 36XX'; and 'Payslip 77XX'.

It appears from the CCDFs that the Complainant's employment status had changed from part time to full time at the **July 2014** CCDF, however, the Complainant's weekly income remained constant, as per the CCDFs, generally at €400.00 or €450.00 – despite becoming employed on a full-time basis. It is not entirely clear how the Complainant's income remained constant even though she moved from part time to full time employment, as this would surely entail an uplift in income. However, the CCDFs do not contain any information which would explain this apparent anomaly. It does not appear that any enquiries were made by the Provider in respect of this, either despite a CCDF having been recently completed in **June 2014**, approximately five weeks before the **July 2014** CCDF was completed when the change in employment status was recorded. This is disappointing.

When payslips were retained by the Provider, which appears to have been from **August 2017**, I note that the amounts recorded as weekly income on the **August, October and December 2017** CCDFs, do not appear to correlate with the monthly income amount contained on the (monthly) payslip. It appears to me that the amount of income recorded on the CCDFs exceed (when considered on a monthly basis) the amounts stated on the payslips. On **February 2018** CCDF, I note that weekly income is recorded as €289.00 whereas the accompanying payslip records a net pay amount of €1,472.90.

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Accordingly, it is not clear from these particular CCDFs where the discrepancies originated, nor has the Provider recorded any information on the CCDFs or provided any supporting documentation which would reconcile these apparent discrepancies.

In terms of the loans assessed by way of the Affordability spreadsheet, I note that three payslips were provided in respect of these loans, with the Provider taking the median figure as the Complainant's income figure.

Separately, I note from the Complainant's evidence that she was in receipt of FIS (a social welfare payment). However, it is not clear when, or for how long, these social welfare payments were being received, or if the Complainant was in receipt of such payments at the dates of the moneylending agreements which are the subject of this complaint. It is also not clear whether the Complainant informed the Provider that she was in receipt of any social welfare payments. However, it does not appear that any documentation in respect of these payments was sought or retained by the Provider or furnished by the Complainant. There is also no evidence of any enquiries being made by the Provider in respect of any such income, nor is there evidence that income of this nature was verified by the Provider.

Based on the available evidence, I am satisfied that the Provider sought to verify, to a certain extent, the Complainant's income, though I am not entirely satisfied that the Provider verified the Complainant's income in an adequate manner, given the change in the Complainant's employment status, the discrepancies between the recorded weekly income and the payslip amounts, and also due to the fact that the Complainant may have been in receipt of social welfare payments. However, it is my opinion that the Complainant was best placed to know her weekly income and outgoings. If this information was incomplete, inaccurate or incorrect, it was open to the Complainant to seek to correct this information, amend the CCDF, decline to sign the CCDF or Moneylending Agreement, or bring matters to the Provider's attention, but there is no evidence that she did so.

It appears that at various points between **2013** and **2019** the Complainant was repaying more than one moneylending agreement with the Provider. Up to **June 2016**, in the **Outgoings** section of the CCDFs, one of the four sub-categories was 'Other credit/mail order per week'. However, on only one occasion (**11 June 2015**) was this sub-category ever populated. From **June 2016**, a sub-category in respect of existing Provider credit was incorporated, which began to be populated in this, and subsequent, CCDFs. In these circumstances, it is not entirely clear whether and if so, under which sub-category, any existing Provider credit was factored into the Outgoings section of the CCDFs. However, when considering whether to offer the various moneylending agreements, I am satisfied that both the Provider and the Complainant were aware, or ought reasonably to have been aware, of any existing agreements and the instalment amounts in respect of these agreements.

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The Complainant has made two quite serious statements in the course of her submissions. First, the Complainant states that *"I was coached by the agent and worked out what numbers worked on the forms to get the loan agreed"*; and second, the Complainant states that the Provider's agent *"explained exactly what I had to say and what figures worked."* However, I note from a Provider submission dated **29 January 2021** that the agent in question no longer works for the Provider and the Provider is unable to furnish a statement of recollection from this individual.

In contrast to this, the Complainant says she signed the relevant documentation:

*"not really caring what figures were on them as long as I could get the money to pay off electric, gas, and all other bills that had fallen behind whilst I paid €400-600 per month on [Provider] loans."*

I also note the Complainant says she willingly entered, and was not pressurised, into the various moneylending agreements.

If it were the case that the parties augmented the figures contained on CCDFs, it appears the Complainant was aware, and should have been aware, when signing the CCDFs that the information contained on these documents was not accurate. It also appears from the statements cited in the above paragraph, that the Complainant was not concerned with the accuracy of the information recorded. However, it appears the Complainant was nonetheless satisfied to sign the relevant documentation and drawdown the loans funds.

As a result, I do not consider it reasonable for the Complainant to suggest that the Provider's agent recorded inaccurate or incorrect figures on the CCDF to facilitate loan approval when the Complainant appears to have been aware of this, was willing to sign documentation regardless of the figures and appears to have knowingly signed documentation which may not have contained entirely accurate or correct information. That said, the Provider should have been mindful of financially vulnerable individuals who, as the Complainant confirms, were willing to sign whatever information was on the documents, however inaccurate, *"not really caring what figures were on them as long as I could get the money to pay off ...."*

Provision 16 of the Code states that before providing a product to a consumer, a moneylender must prepare a written statement setting out the reasons why the product is considered suitable. However, it does not appear that any such written statement was furnished to the Complainant in respect of the 29 moneylending agreements the subject of this complaint. In the absence of such evidence, it is my opinion that the Provider has not demonstrated its compliance with this provision of the Code. That said, I do not consider the Provider's failure to comply with Provision 16, in itself, means that the loans to subject of this complaint were mis-sold to the Complainant.

The Complainant remarks that she entered new moneylending agreements in order to repay the amounts advanced on foot of previous agreements. While the Complainant may have entered moneylending agreements to repay previous moneylending agreements, I do not consider the Provider's conduct at that time, in approving additional moneylending agreements for this purpose, to have been unreasonable. If the Complainant was unable to repay a particular moneylending agreement within the agreed period she would have been in default and the Provider would have been entitled to seek to recover the amounts owed.

I am also conscious that the agreements which are the subject of this complaint, were all entered into by the Complainant, before the **Central Bank (Supervision and Enforcement) Act 2013 (Section 48) (Licensed Moneylenders) Regulations 2020** came into effect, Section 18 of which requires that:

*"A moneylender, who has entered into a moneylending agreement with a consumer which has not been repaid in full, must before entry into a second or subsequent moneylending agreement with a consumer provide the consumer with the following information, in a durable medium, aggregated to include the second or subsequent moneylending agreement in question...."*

The relevant information now includes the total number of moneylending agreements in force, the total balance outstanding etc. This was not however a regulatory requirement for the Provider, in the period 2013 – 2019.

By letter dated **29 April 2019**, the Complainant made a formal complaint to the Provider. Provision 27(a) of the Code requires the Provider to acknowledge the complaint within five business days. I note that neither party has provided a copy of any correspondence which acknowledged the complaint. Further to this, I note from the Provider's Complaint Response that when asked to provide a copy of all correspondence between the Provider and the Complainant exchanged between **January 2014** to date, the Provider itemised the Complainant's letter of complaint and its Final Response letter but did not include a complaint acknowledgement letter.

However, I also note from a submission dated **2 December 2021** that the Provider furnished certain documentation to this Office, including a copy letter addressed to the Complainant, apparently acknowledging her complaint. While this letter contained the same complaint reference number as the Final Response letter dated **16 May 2019**, the letter itself is dated **7 December 2021**. As a result, it is not clear whether this is a copy of a letter that issued to the Complainant in acknowledgment of her complaint or simply a template letter. In those circumstances, having considered the evidence available, I am not satisfied that the Provider acknowledged the Complainant's complaint in accordance with Provision 27(a) of the Code, although I take the view that the Final Response letter was promptly issued, on **16 May 2019**.

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Having considered the matter at length, I am not satisfied that the moneylending agreements the subject of this complaint, were mis-sold. However, I am satisfied that there were certain shortcomings regarding the Provider's verification of the Complainant's income, and there is an absence of clarity as to the way it incorporated instalments in respect of existing moneylending agreements into the CCDFs and an absence of evidence to demonstrate compliance with Provision 16 of the Code, in addition to the failure to meet the full requirements of Provision 27(a).

I take the view that these shortcomings constitute conduct by the Provider which was unreasonable within the meaning of **Section 60(2)(b)** of the **Financial Services and Pensions Ombudsman Act 2017**, quite apart from the Provider's failure to meet its obligations pursuant to the Code, which I consider to be contrary to law, within the meaning of **Section 60(2)(a)** of the **Financial Services and Pensions Ombudsman Act 2017**.

Therefore, for the reasons set out above, I consider it appropriate to partially 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 partially upheld, on the grounds prescribed in **Section 60(2)(a) and (b)**.
- Pursuant to **Section 60(4)(d) 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 Complainant in the sum of **€1,500.00** (one thousand five hundred Euros) to an account of the Complainant's choosing, within a period of 35 days of the nomination of account details by the Complainant 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)**

5 August 2022

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## 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.