An tOmbudsman Seirbhísí Airgeadais agus Pinsean
Financial Services and Pensions Ombudsman

Decision Ref:	2022-0307
Sector:	Banking
Product / Service:	Credit Cards
Conduct(s) complained of:	Incorrect information sent to credit reference agency
Outcome:	Upheld

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The complaint relates to the maladministration of a debt and the Provider's incorrect reporting of the same debt to the Central Credit Register (**CCR**).

The Complainant's Case

The Complainant states that he entered into an agreement with a third party provider (the **vendor**) for a credit card account. The Complainant states that he experienced issues within his financial life and had to declare bankruptcy in **October 2016**. The Complainant states that he was discharged from bankruptcy in **October 2017**. He states that as part of the bankruptcy process, he declared his debt with the vendor and as a result, this debt should have fully been discharged.

The Complainant states that he received a letter from the Provider dated **28 March 2019** to advise that the debt associated with this credit card had been transferred to the Provider from the vendor. The Complainant submits that receipt of this letter dragged him back to those worrying times and he again had to explain his position.

The Complainant states that he emailed the Provider on **1 April 2019** advising of the bankruptcy and he stated that this debt should have been discharged as part of the bankruptcy. The Complainant states that he received a further letter from the Provider on **19 June 2019** wherein it stated that it had taken over the loan from the vendor and it outlined his outstanding debt. The Complainant states that he received another letter from the Provider requesting that he provide his passport and proof of address. The Complainant

states that this letter also informed him that the Provider would continue to report him for non-payment of debt.

The Complainant states that he sent an email to the Provider on **25 June 2019** and raised his concerns and explained the damage the errors had caused his credit report. He states that he received a letter from the Provider stating it would investigate his complaint that the Provider was reporting his account incorrectly to the CCR.

The Complainant considers the offer of €700 made by the Provider to be unacceptable on the basis of the "*nightmare*" that the Provider forced him to go through again to clear his name and the debt. He submits that he is a vulnerable customer who has lost everything, and he has been trying to piece back his life.

The Provider's Case

The Provider submits that in **December 2017**, the Complainant's account was purchased by a related entity as part of a folio acquisition from a vendor financial service provider. It submits that at the point of migration, the account was marked as "*insolvency*" and no further specific details regarding the type of insolvency were provided by the vendor. It admits that at the point, the account was put on hold, with no calls being made and no requests for payment made. It further submits that no correspondence issued to the Complainant apart from communications on the assignment to the related entity and a notification in relation to the internal transfer of ownership from the related entity to the Provider on **31st May 2019**.

The Provider submits that it was not until the Complainant's email of **25th June 2019** which enclosed a copy of the bankruptcy order, that it became aware of what insolvency action had occurred on the account. It notes that the Complainant advised that an email was sent to it on **1st April 2019** with a copy of his bankruptcy order, but the Provider has no record of this and cannot locate the email in question.

The Provider submits that the Complainant called it on **1st April 2019** ,to advise he was bankrupt. The Provider submits that it requested evidence of the bankruptcy to be submitted and provided an email address to which the proof should be sent. It submits that it has no record of having received an email from the Complainant during this time. Instead, it submits that the Complainant emailed a complaint on **26th June 2019** and called to inquire if the email had been received. The Provider submits that it confirmed that the email was received and would be sent to the complaints department.

The Provider submits that a complaint acknowledgement letter was issued to the Complainant on **1st July 2019** and a holding letter sent on **23rd July 2019**.

The Provider submits that on **31st July 2019**, it sent an email to the vendor inquiring if it had received details surrounding the Complainant's bankruptcy. It submits that bankruptcy documentation was received from the vendor on **31st July 2019**. The Provider submits that the final response letter to the Complainant's complaint was issued on **9th August 2019**.

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The Provider submits that its related entity purchased the Complainant's account in **December 2017** and the transfer of ownership occurred between the vendor and that entity on **31st January 2018**. An internal transfer whereby the ownership of the loan transferred from the related entity to the Provider, occurred on **31st May 2019**.

The Provider submits that its related entity commenced reporting the Complainant's account to the Central Credit Register (**CCR**) in **June 2018** and information for **February 2018** to **June 2018** was submitted to the CCR. It submits that as it happened, this information was not loaded to the CCR due to technical reasons and did not become part of the Complainant's credit report.

It submits that between **July 2018 and May 2019**, the Complainant's account was reported on a monthly basis. In **June 2019**, it argues that the entity reporting the Complainant's account to the CCR was changed to the Provider, and the previously reported records were recoded as a result of the internal transfer of ownership of the account.

On foot of the investigation of the complaint, the Provider submits that it requested that the CCR delete all records relating to the Complainant's account from the CCR in **July 2019** because as the Complainant was declared bankrupt prior to the commencement of the reporting obligation to the CCR. From **August 2019** and thereafter, it submits that no information has been provided to the CCR.

The Provider accepts that it fell below its standards for complaints handling and it offered the Complainant **€700** in compensation.

The Complaint for Adjudication

The complaint is that the Provider:

1. incorrectly reported the Complainant's historical debt to the Central Credit Register on the basis of a loan that had been discharged as part of previous bankruptcy order;

2. despite receiving written correspondence from the Complainant explaining that this debt had been discharged, continued to send letters relating to the debt and advised it would continue to report to the Central Credit Register;

The Complainant says that these events unnecessarily negatively impacted his credit history and caused him to experience stress and inconvenience that has also made him revisit issues that he was keen to move on from.

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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 **13 June 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. Following the consideration of additional submissions from the parties, the final determination of this office is set out below.

I note that the Complainant held a credit card with a third party. The account was purchased from the vendor third party in **December 2017** and was assigned to the Provider in **January 2018**. I note that the account was labelled or flagged '*insolvency*' by the vendor, so the Provider was on notice from the outset that the Complainant's account had been or was subject to an insolvency procedure. It appears that the Provider was not made aware of the precise circumstances or of the making of an adjudication in bankruptcy, despite the vendor being on notice.

I note that the Complainant was adjudicated bankrupt on **10th October 2016**. His bankruptcy was automatically discharged on **10th October 2017**. This was confirmed by way of Certificate of Discharge from Bankruptcy dated **17th October 2017**.

By letter dated **28th March 2019**, the Provider informed the Complainant that its related entity which had purchased his account from the vendor, had transferred his account to the Provider, which transfer would complete around **31st May 2019**.

I have listened to a call recording from **1st April 2019** when the Complainant telephoned the Provider in response to the letter of **28th March 2019**. The Provider stated that there was an outstanding balance of **€4,774** on his former account with the vendor which it had purchased.

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The Complainant explained that he had been declared bankrupt some years earlier and the Provider should not be contacting him. The agent explained that the account noted that the Provider was awaiting further details from the vendor about an insolvency. She suggested that if he had further information and could send it in, the issue might be resolved faster. An email address was provided to him. The agent apologised to him and stated that the Provider would look into the issue, once he sent in the documentation. She also assured him the Provider would look into the issue, in any event.

I note that the Provider's system log from **1st April 2019** simply states that the Provider was awaiting details regarding insolvency and that the Complainant would forward it the relevant documents to a given email address. The log does not include the notification of a prior bankruptcy and the Complainant's request that he no longer be contacted. Neither does the log record the call as a complaint, which it ought to have in my view.

By email dated **1st April 2019,** the Complainant wrote to the Provider after this call. He stated that he was annoyed to be contacted so long after concluding his bankruptcy, as the bankruptcy was a chance to start again. He stated that it was not acceptable that the Provider had written to him, and he attached a copy of his discharge from bankruptcy. He requested confirmation that the debt had been cleared, and that he would no longer hear from the Provider or the vendor again. He stated that if this could not be done, he would get in touch with the Insolvency Service of Ireland to seek a remedy for the intrusion into his life.

It appears that no action was taken by the Provider on foot of this email, and it was not logged as a complaint. The Provider denies having any record of this email, though I note that the email appears at the bottom of the Complainant's later email to the Provider of **25th June 2019**. In a later submission, the Provider accepts that it held a copy of the email within a thread of emails provided by the Complainant in **June 2019**. It further does not dispute that the Complainant sent the email on **1st April 2019**. It submits that it has been unable to locate the email from that date within its system, and this was the reason why the email was not actioned at the time.

I am satisfied on the evidence before me that the email was sent by the Complainant to the Provider, notifying it on **1st April 2019**, both during a call and by email, that the Complainant was a discharged bankrupt. He further provided evidence of his discharge from bankruptcy to the Provider on that date. On that basis, I am satisfied that the Provider was notified on **1st April 2019** that the debt was no longer recoverable from the Complainant.

Regrettably, no action was taken by the Provider in response to the telephone call or the email. No inquiries were made of the vendor despite the commitments of the agent during the call that it was awaiting further information from the vendor and would look into the issue. Instead, the Provider continued to report the Complainant's account to the CCR with an outstanding balance. By letter dated **19th June 2019**, the Provider wrote to the Complainant confirming that the account had transferred to it on **31st May 2019**. It also requested proof of identify and address, from the Complainant and notified him that his loan information was being sent to the CCR.

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By email dated **25th June 2019**, the Complainant wrote to the Provider expressing concern over his credit record as reported by the Provider over the last two years. He argued that the purpose of the bankruptcy, amongst other things, was to give him a new start. He stated that he recently requested a copy of his credit report, and it included a credit card liability with the Provider/vendor and suggested that the Provider was reporting him to the credit agency for a number of years. The Complainant stated that a letter of apology would not suffice for the failure and he requested financial compensation from the Provider. His original email from **1 April 2019** appeared at the bottom of this email.

A copy of the Complainant's credit report was provided dated **30th April 2019**. Month by month between **February 2018** and **April 2019**, the record showed an outstanding balance of €4,774 due to the Provider with 100 payments past due and a revoked credit card. Quite apart from the other issues arising in this complaint, the reference to 100 missed payments appears to be an error.

The Complainant called the Provider on **26th June 2019** as he had received an email in response to his complaint email stating that it could not discuss the matter over email. This email has not been submitted in evidence. He requested confirmation that the email would be actioned. The agent confirmed it had been sent to the complaints department.

The complaint was acknowledged by letter dated **1st July 2019** with the Provider summarising this complaint as the incorrect reporting of the account to the CCR. A complaint holding letter was sent on **23rd July 2019**.

It appears from the Provider's systems notes that it received records of the Complainant's adjudication in bankruptcy from the vendor on **31st July 2019**.

By letter dated **8th August 2019**, the Provider wrote to the Complainant as follows:

> "*We purchased your account as part of a portfolio transfer in December 2017, upon purchase we held no details that your account was subject to a Bankruptcy order. The account was reported to the CCR in good faith based on the information we held.*
>
> *Following our conversation in June 2019 we investigated the matter further and are now in possession of the bankruptcy order which you were granted in October 2016. We have closed your account with our office as well as removing any details from the CCR.*
>
> *We would like to apologise for the resultant inconvenience caused and in addition with our apology, we would like to offer you a gesture of good will for the amount of €700.00*."

This letter suggests that the Provider had no information about the bankruptcy when the account was transferred to it (which I do not accept) and that its investigation led to receipt of a copy of the bankruptcy order (although it was the Complainant who submitted relevant documentation to it, in **June 2019**).

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My understanding of the Provider's response to this complaint is that it has taken responsibility for errors in its complaint handling (which may include failing to take steps to investigate the bankruptcy when it was notified of it on **1 April 2022)** but it has not taken responsibility in respect of the incorrect reporting of the Complainant's account between **July 2018** and **July 2019**. The reason for this, as appears from the final response letter, is that "*it held no details that your account was subject to a Bankruptcy order*" when the account was assigned from the vendor.

It is accepted by the Provider however that the account was included in a list of accounts marked "*insolvency*". The Provider (and its related entity which initially purchased the account) were therefore on notice at all material times that the account was subject to some insolvency process. In the Complainant's case, as a natural person, this process could only have been personal insolvency or bankruptcy. In my opinion, the Provider ought to have been aware that the conclusion of such a process would result in the settlement or write off of the Complainant's debt.

I accept that the Provider was not notified by the vendor either as to which procedure was engaged, or what stage that procedure was at, in my view, the Provider was given sufficient information that ought to have led to further inquiries. By the time the Complainant contacted it on **1st April 2019**, the Provider/related entity had owned the debt for almost a year and a half, despite its agent suggesting it was still awaiting information on the insolvency from the vendor.

In its response to questions raised by this Office, the Provider submits that due to the "*insolvency*" marking, the account was put on hold and no calls or requests for payment were made to the Complainant. It is not explained, however, why it decided to make reports to the CCR of an outstanding debt, despite being aware of an insolvency process. In my view, it ought to have sought further details from the vendor at this point. It has not provided any explanation for why it did not do so.

In my opinion, the fact that details were requested of the vendor and provided by it, in late **July 2019** demonstrates that there was a mechanism between vendor and purchaser by which such details could be sought. The fact that the Provider did not make any requests for payments from the Complainant demonstrates, in my opinion, that it was aware that this would be inappropriate in an insolvency context. It should also have been aware that the conclusion of such a process, would result in the settlement or write off of debt.

I am of the view that, without any further inquiries being made of the vendor in light of the labeling of the Complainant's account with "*insolvency*", the Provider's conduct in reporting an overdue balance on the Complainant's historical account to the CCR, between **July 2018** and **July 2019** was unreasonable within the meaning of ***Section 60(2)(b)*** of the ***Financial Services and Pension Ombudsman Act 2017***.

I am also of the view that the Provider provided insufficient complaints handling to the Complainant in this matter. Under the ***Consumer Protections Code 2012*** (**CPC**), the Provider has the following obligations:

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"*10.7 A regulated entity must seek to resolve any complaints with consumers.*

10.8 When a regulated entity receives an oral complaint, it must offer the consumer the opportunity to have this handled in accordance with the regulated entity's complaints process."

I am of the view that the Provider fell short of its obligations or the handling of complaints under provisions 10.7 and 10.8 of the CPC by failing to investigate the Complainant's initial complaint, by call and by email of **1st April 2019** when he notified it of his adjudication in bankruptcy. The Provider failed to log and investigate the call or email as a complaint or take any action to prevent the further incorrect reporting of his account to the CCR in the months that followed, despite having now been expressly notified that the Complainant had been adjudicated bankrupt.

The Provider accepts that it acted contrary to its own internal complaints' procedures in its handling of the matter. This led to a needless extension of the incorrect reporting period which could have been prevented, had the Provider abided by its obligations under the CPC and its own complaints procedures. I am of the view that, by breaching its obligations under provisions 10.7 and 10.8 CPC 2012, the Provider's conduct was contrary to law under ***Section 60(2)(a)*** of the ***Financial Services and Pensions Ombudsman Act 2017*** and/or was unreasonable under ***Section 60(2)(b***) of the ***Financial Services and Pensions Ombudsman Act 2017.*** It is difficult to assess whether the incorrect reporting had any impact on the Complainant's ability to obtain credit during the relevant period as his bankruptcy alone and associated write-off of debt would have had a great impact on his credit rating, in any event. It created an additional barrier however, to the Complainant's ability to obtain credit during the relevant period. Furthermore, it is clear that the Provider's incorrect reporting caused the Complainant some considerable inconvenience after a vulnerable period of his life, when he was attempting to get things back on track, and to recover from what have been some very difficult circumstances for him.

<u>Conclusion</u>

- 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)(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 **€2,500**, 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.***

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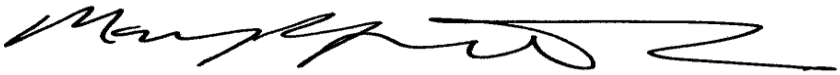
The above Decision is legally binding on the parties, subject only to an appeal to the High Court not later than 35 days after the date of notification of this Decision.



MARYROSE MCGOVERN
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN (ACTING)

7 September 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.