An tOmbudsman Seirbhísí Airgeadais agus Pinsean
Financial Services and Pensions Ombudsman

Decision Ref:	2022-0308
Sector:	Banking
Product / Service:	Credit Union Loan
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 concerns the reporting of a loan by the Provider to the Central Credit Register (**CCR**).

The Complainant's Case

The Complainant states that he took out a personal loan with the Provider, but his business ran into difficulties which to led him entering bankruptcy on **10 October 2016**. The Complainant states that the Provider had initially instigated a Civil Bill against him in **November 2016**, but this was withdrawn once the Provider became aware of his bankruptcy on 10 October 2016. The Complainant states that he was discharged from his bankruptcy in **October 2017**.

The Complainant states that in **2019** he noticed from his credit report that the Provider continued to report the non-payment of his previous debt. The Complainant states that he wrote to the Provider on **25th June 2019** to advise that it was reporting the debt in error, and he was seeking a remedy to the situation. The Complainant states that the Provider issued a response to the Complainant on **23rd July 2019** and stated that it did not agree that it was reporting his account in error. The Complainant argues that this is in breach of his discharge from bankruptcy, and he wants the position resolved and to be compensated.

The Complainant submitted evidence of communications that he had with Provider and the Insolvency Service of Ireland in respect of the issue. The Complainant submitted CCR reports showing a credit status of "write off" or outstanding balance zero, in respect of previous debt with other creditors.

The Complainant also submitted an updated credit report in respect of the Provider which notes that his credit status stated "*settlement*" as of **January 2021**. The Complainant argues that the CCR has no part to play in a bankrupt's debt because the debt no longer exists. He argues that after a period of 12 months from adjudication of bankruptcy, the remaining debt is cleared or written off and the discharged bankrupt allowed to continue with their life unfettered by old debt.

The Complainant wants the Provider to issue compensation for mis-reporting his account to the credit authorities and wants a letter concluding the account and confirming that the account is closed and that he will no longer be reported to the CCR for non-payment.

The Provider's Case

The Provider submits that the ***Credit Reporting Act 2013 (Section 11) (Provision of Information for Central Credit Register) Regulations 2016*** (SI No 486/2016) (**2016 Regs**) covers its obligations to report to the CCR. It submits that the 2016 Regs do not provide explicit instruction in the area of bankruptcy or personal insolvency arrangements but that the CCR Guidance document for Providers issued by the Central Bank compels the Provider to continue to report the loan unless directed by a court not to do so.

The Provider states that it continues to report the loan monthly to the CCR and will continue to do so until receipt of a direction by court not to report in accordance with the CCR Guidance document which, it submits, states as follows:

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

The Provider submits that the legal department of the Irish League of Credit Unions (**ILCU**) sought clarity on this section from the CCR in order to be certain on this issue. It submits that, by way of reply, the CCR explained that there is no specific field in the CCR for lenders to report bankruptcies or personal insolvency arrangements and that Providers should continue to report the loan to the CCR, unless directed by a court not to do so.

The Provider submits that the liability of the Complainant was reduced to a carrying value of zero in the books of the Provider on the **29 September 2016** in recognition of the diminution of the asset value and in accordance with accounting requirements. It submits that the liability continues to exist but, due to the bankruptcy, the Provider cannot enforce collection. It submits that the term "write-off" is an accounting term which means that a lender does not count the money owed as an asset to the company anymore. It submits that its financial statements will reflect the change. It argues that lenders are required to write off certain bad loans so as not to mislead investors, but the money is still owed.

/Cont'd…

The Provider submits that it first learned of the Complainant's bankruptcy on **30 November 2016** by email from the Insolvency Service of Ireland.

It submits that it commenced reporting personal and credit information on loans to the CCR on the introduction of this obligation for credit unions on **30th June 2017**. It submits that it issued a communication to all members, including the Complainant, regarding the introduction of the CCR.

The Provider submits that the Complainant's liability for the debt was "removed" when the Complainant became bankrupt on **10 October 2016**. As a consequences of that, it submits that it immediately ceased pursuing the Complainant for the debt. In accordance with the Guidance issued in respect of the CCR, however, it submits that it is required to report the loan to the CCR unless directed by a court not to do so.

The Provider submits that the Complainant instigated an amendment process request in **May 2020**. It submits that on **5th May 2020**, the CCR emailed it asking it to review an attached document to confirm a contract position currently under question. It submits that on **6th May 2020**, it emailed the CCR and confirmed that no amendment was required. It argues that this confirmation was provided after engagement with the ILCU as referenced above. It submits that it has not received any legal instruction or notification from the courts requiring it not to report the loan to the CCR.

The Provider submits that it referred to its solicitors and the legal department of the ILCU for advice and clarification on the issue. It submits that its solicitors provided a draft response to include suggested contact with the CCR. It submits that it spoke to the CCR and the CCR advised that the Provider could temporarily remove the Complainant's loan from the report for one month but it would have to re-appear the following month unless the debt was cleared in full on behalf of the Complainant.

It submits that guidance from the ILCU referred it to the Central Bank's Guidance. On the basis of this direction and further conversations, the Provider reported the Complainant's historical loan to the CCR.

The Provider submits that, in addition to the engagement between the legal department of the ILCU and the CCR, it contacted the CCR for guidance directly on **17th April 2020**. It submits that the CCR responded that there was no specific field in the CCR for lenders to report bankruptcies and they should continue to report the loan to the CCR unless directed by the court not to do so.

The Provider argues that it is regulated by the Central Bank of Ireland and understands that reporting the Complainant's loan is a requirement and is not optional. It submits that, with effect from **30th November 2016**, the Provider is no longer pursuing the Complainant for this debt and has nothing to gain from making the monthly report.

/Cont'd…

The Complaint for Adjudication

The complaint is that the Provider incorrectly reported the Complainant's loan to the CCR from **July 2017**.

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 entered into a loan contract with the Provider in **January 2015** to borrow **€15,000**. The loan account went into arrears and ultimately, the Complainant was adjudicated bankrupt on **10th October 2016.**

In or around **November 2016**, a Civil Bill was issued by the Provider against the Complainant in respect of the loan account. These proceedings sought repayment of the outstanding loan balance and were discontinued by the Provider.

I am satisfied that those proceedings do not concern the same subject matter as the present complaint (ie the alleged wrongful reporting of the Complainant's loan account to the CCR after his adjudication in bankruptcy) and accordingly, the FSPO is not prevented from adjudicating this complaint, by ***Section 50(3)(b)*** of the ***Financial Services and Pensions Ombudsman Act 2017***.

/Cont'd…

I note that by email dated **30th November 2016**, the Insolvency Service of Ireland (**ISI**) wrote to the Provider notifying it that the Complainant was adjudicated bankrupt on **10th October 2016** and enclosing the order of adjudication. The email stated that the Complainant's assets and liabilities now vested with the Official Assignee in bankruptcy and that the Provider should not make any further contact with the Complainant regarding its unsecured debt.

The ISI also stated that, pursuant to section 136 of the ***Bankruptcy Act 1988***, the only remedy available for unsecured debts was under the Bankruptcy Act. It attached a proof of debt form for completion, should the Provider wish to make a claim in the Complainant's bankruptcy estate.

I note that the Complainant was discharged from bankruptcy from **10th October 2017**. This was confirmed in a letter dated **17th October 2017** from the Official Assignee.

The Central Credit Register (**CCR**) was established under the ***Credit Reporting Act 2013*** (**CRA 2013**) as amended. The CCR is a mandatory credit reporting and credit enquiry system: credit providers are required to supply comprehensive information in relation to borrowers (and guarantors) to the CCR and are also required to carry out credit searches on the CCR prior to approving credit applications. From **July 2017**, the Provider commenced making credit reports to the CCR in respect of the Complainant's loan account.

The CRA 2013 or the 2016 Regs provide no specific guidance to creditors in respect of the reporting of debts where a debtor has been adjudicated bankrupt.

A Guidance document is available from the Central Bank of Ireland (**CBI**) in respect of the CCR. In the Guidance, the borrower is referred to as a Credit Information Subject (**CIS**) and the creditor/financial service provider as a Credit Information Provider (**CIP**). The following are the relevant parts of the Guidance which deal with the issue that arises in the present complaint:

> "**4.6 Reporting to the CCR**
> …
>
> **4.6.4 Arrears/Breakdown of the relationship**
> …
> ***4.6.4.2 Reporting of Credit Status***
>
> *The Credit Status field is used to capture information on:*
>
> > *Contracts post arrears and/or following the failure of the CIS to honour the terms of a credit agreement, to reflect information on steps taken to recover monies owed.*
> >
> > *Contracts that have multiple payment frequencies in place, e.g. monthly interest payments and quarterly capital payments, in order to reflect an arrears position.*

/Cont'd…

Scope of reporting obligation

When the CIP takes a step to recover debts under the terms of a credit agreement, this must be reported using the relevant domain value.

When a CIS goes into arrears on a loan with multiple payment frequencies in place.

Judgment, bankruptcy or any other arrangement under the Personal Insolvency Act 2012 are not reportable to the CCR as specific events.

What to report

The CIP must report the relevant domain value under the Credit Status data field.

Table 4.6.4 Credit Status Domain Values

Credit Status Domain Value	*Definition*
…	
Settlement	*A settlement on the amount owing has been agreed with the CIS and the account is to be closed. To note: This status should not be used where a CIS has simply repaid a performing debt in advance of the maturity date.*
Write-off	*A write-off has taken place that was not part of a settlement and the account is to be closed.*

….

When to report

- *Once the CIP has taken steps to recover the debt owing, the relevant domain value should be reported at the next reporting date.*

- *The CIP should continue to report the relevant domain value each month subsequently until a further step is taken, at which point the new domain value should be reported and so on OR until the position has been regularised.*

***PLEASE NOTE**: Loans held by CISs that are subject to bankruptcy, judgment or insolvency service arrangement are reportable to the CCR unless there is a specific legal instruction not to do so.*

***PLEASE NOTE**: An event of bankruptcy, judgment or insolvency arrangement is not reportable to the CCR. All other data relating to these loans must be reported.*

/Cont'd…

Sample Credit Status Reporting Scenarios

…

4. A CIP writes off the debt under a credit agreement internally, but continues to hold the CIS liable for the debt.

If a CIP has written off an exposure, but is continuing to hold the CIS liable for the debt under the credit agreement even if the CIP is not in active pursuit thereof, the CIP must continue to report this credit agreement as an active contract on the CCR.

The CIP must only report Write-Off under the Credit Status data field where the account is to be closed, i.e. where the CIP is no longer holding the CIS liable for the debt under the credit agreement.

…

4.6.5 Closure of the contract

The Contract Phase data field is used to reflect a contract that has been closed (at the maturity date), or closed in advance (i.e. earlier than the maturity date).

Scope of reporting obligation

When the debt owed under a contract has been repaid, refinanced or written off, the CIP should reflect this at the next reporting date on the CCR.

What to report

- *The closure of a credit agreement should be reported in the Contract Phase data field by selecting the domain value Closed if the contract has been closed at the maturity date or Closed in Advance if the contract has been repaid ahead of the maturity date.*

…

- *Where the closure of the credit agreement is as a result of a settlement, i.e. an agreement was made between the CIP and the CIS on the amount owing and the loan or account is to be closed, the CIP must reflect this by reporting the following:*
    - *o Settlement under the Credit Status data field; and*
    - *o Closed in Advance under the Contract Phase data field if the closure occurs earlier than the maturity date.*

/Cont'd…

- *Where the closure of the credit agreement is as a result of a write-off, i.e. a write-off has taken place that was not part of a settlement with the CIS, the CIP must reflect this by reporting the following:*
    - *o Write-Off under the Credit Status data field; and*
    - *o Closed in Advance under the Contract Phase data field if the closure occurs earlier than the maturity date*.

…

When to report

- *The CIP should report the information to reflect the closed agreement at the next reporting date*."

I note that the CBI Guidance in respect of loans where the debtor has been adjudicated bankrupt, is limited. I accept that it may be difficult for a financial service provider to connect (i) the Guidance explaining that an event of bankruptcy is not included in the register and that loans continue to be reportable and (ii) the Guidance explaining the steps to be taken where a credit agreement is closed, as a result of a write-off.

I accept that the Provider seems to have examined this Guidance when it received the present complaint and it further sought advice from its solicitors and from both the CCR itself and the ILCU.

While I acknowledged that the Provider has sought to comply with its obligations under the CRA 2013, I am not of the view that it has done so. In my view, the Provider has focused only on sentences from the Guidance which suggest a continuing reporting obligation. It has however ignored other sections of the Guidance which clarify that where debt has been written off, this should be reflected in the reporting.

The Guidance clarifies that bankruptcy does not of itself result in an obligation being placed on a lender to cease reporting a loan to the CCR. The Guidance, however, makes clear that if the bankruptcy process results in a loan being written off, then the loan will be reported as written off to the CCR.

The Provider has stated that the debt was written off on the **29 September 2016**. It has then sought to argue that the liability still exists but, due to the bankruptcy, it cannot enforce collection against the Complainant. This position is somewhat contradictory, however, as it has also stated that it has ceased to pursue the Complainant and that "*liability was removed when the Complainant became bankrupt on the 10/10/2016*".

It is unclear what distinction that Provider is seeking to make in this instance. There may be some very limited circumstances where a debt is formally written off in a company's accounts, but that debt is written back and is pursued. That is not, however, what has happened in the present situation. Section 136(1) of the ***Bankruptcy Act 1988*** provides as follows:

/Cont'd…

> "*On the making of on order of adjudication, a creditor to whom the bankrupt is indebted for any debt provable in bankruptcy shall not have any remedy against the property or person of the bankrupt in respect of the debt apart from his rights under this Act, and he shall not commence any proceedings in respect of such debt unless with the leave of the Court and on such terms as the Court may impose*."

The Provider has acknowledged that the Complainant's "*liability was removed*" in the bankruptcy. There is no question that the Provider can pursue the balance of the loan against the Complainant following his discharge form bankruptcy. As a result, the Provider has written off the balance of the loan account in its own accounts. There is no remedy for the Provider to recover from the Complainant and I do not accept the Provider's position that "*the liability still continues to exist*". This is not correct. Accordingly, I am satisfied that the loan account should have been closed by the Provider at latest by the date of the Complainant's discharge from bankruptcy.

The Central Bank Borrower FAQs in relation to the CCR states:

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

In the present case, the bankruptcy process did involve the Provider writing off the balance of the Complainant's loan in **September 2016**. It ought, in my view, to have reported the loan as "*written off*" thereafter, and at least by the date of his discharge from bankruptcy.

This is in accordance with the Guidance document cited above. The relevant portion of the Guidance states as follows:

> "*When the debt owed under a contract has been repaid, refinanced or written off, the CIP should reflect this at the next reporting date on the CCR.*
> *…*
>
> *Where the closure of the credit agreement is as a result of a write-off, i.e. a write-off has taken place that was not part of a settlement with the CIS, the CIP must reflect this by reporting the following:*
>
> *o Write-Off under the Credit Status data field; and*
> *o Closed in Advance under the Contract Phase data field if the closure occurs earlier than the maturity date*."

In terms of when to report, the Guidance states that the Provider "*should report the information to reflect the closed agreement at the next reporting date*."

/Cont'd…

This scenario that presented itself to the Provider is specifically dealt with the Guidance as follows:

> "***Sample Credit Status Reporting Scenarios***
>
> *…*
>
> *4. A CIP writes off the debt under a credit agreement internally, <u>but continues to hold the CIS liable for the debt</u>.*
>
> *If a CIP has written off an exposure, but is <u>continuing to hold the CIS liable for the debt</u> under the credit agreement even if the CIP is not in active pursuit thereof, the CIP must continue to report this credit agreement as an active contract on the CCR.*
>
> *The CIP must only report Write-Off under the Credit Status data field where the account is to be closed, i.e. <u>where the CIP is no longer holding the CIS liable for the debt</u> under the credit agreement.*"
>
> [My underlining for emphasis]

In the present case, I am satisfied that the Provider cannot continue "*to hold the CIS liable for the debt*" having correctly written off the exposure as a result of the Complainant's bankruptcy. Rather, because the Provider could no longer hold the Complainant liable for the debt, the account should have been closed and a '*write off*' reported.

It appears that the Provider started to make reports to the CCR in **June/July 2017**. At that point, the Complainant's loan had already been written off by the Provider and should already have been closed. I am therefore of the view that the Provider should not have reported the loan as active, nor should it have reported a **€12,925** balance at any point from October 2017 when he was discharged from bankruptcy. Arguably, the Provider should not have made any report to the CCR since the loan was no longer active in any meaningful sense, at the commencement of the Provider's reporting obligation to the CCR.

In a report from the CCR dated **December 2020**, the Provider reported the Complainant's loan to the CCR as "*active*" and reported the credit status as "*settlement*". It reported that the outstanding balance of the account was €12,975. Under the Guidance set out above, the "*settlement*" terminology it appears to have used since **December 2020** is only appropriate where there has been an agreement between the debtor and creditor. That is not what occurred.

The Complainant's debt to the Provider was an unsecured debt. As a result, the Provider's only remedy was through the bankruptcy process. Following the Complainant's adjudication in bankruptcy in **October 2016**, the debt was written off by the Provider. The account should also have been closed by the Provider, at least by the time that the Complainant was discharged from bankruptcy, though arguably from his adjudication, as there was no active loan which the Provider could hold the Complainant liable for.

/Cont'd…

I am of the view that the Provider's conduct in reporting the Complainant's loan to the CCR in the manner that it did, was unreasonable within the meaning of ***Section 60(2)(b)*** of the ***Financial Services and Pensions Ombudsman Act 2017***.

There is a statutory obligation on all regulated financial service providers to report data relating to active loans, including payment performance. If a loan has been discharged or written off, however, then the obligation is to report it accordingly.

If a borrower has been discharged from bankruptcy, it is the responsibility of the lender to determine based on that event and whether the loan is secured or unsecured, whether it can still be considered active and reported on that basis to the CCR, or whether the outcome of the discharge from bankruptcy is such that the monies are no longer recoverable, and the loan is one for writing off.

I do not consider it reasonable that the Provider has continued to report the Complainant's loan to the CCR on an indefinite basis following his discharge from bankruptcy. The position adopted by the Provider is one that would essentially defeat the purpose of bankruptcy and forever prevent the Complainant from achieving a credit profile which did not refer to his historical debt, from which he was released in **October 2017**.

In recognition of my finding that the Provider's behavior has been unreasonable within the meaning of ***Section 60(2)(b)*** of the ***FSPO Act 2017,*** I consider it appropriate, as specified below, to direct pursuant to ***Section 60(4)(a)*** that the Provider immediately rectify the conduct complained of by notifying the CCR that the loan was written off by the Provider in **October 2016** and by requesting the CCR to amend its records accordingly.

In terms of the impact of the Provider's conduct on the Complainant, there are two potential aspects to this: an effect on his credit rating, and ongoing upset and inconvenience caused by the Provider's refusal to amend the CCR report.

While bankruptcy is not a reportable event to the CCR, it is likely to have a very serious and negative impact on the Complainant's credit rating. There are various obligations for the Complainant in specific scenarios to notify of his previous bankruptcy. Any loan write-offs that arose as a result of the bankruptcy are likely to have a serious adverse effect on the Complainant's credit rating, whether or not his credit profile continued to include the Provider's loan as an outstanding debt. That said, ongoing incorrect reporting would likely affect his credit rating into the future, and it is difficult to assess whether there has been any direct impact on the Complainant's credit rating from the fact that the Provider failed to write off the loan balance in **2017**. Ongoing incorrect reporting of an overdue account balance certainly has not assisted the Complainant is putting his difficult credit history behind him and may have represented a further barrier if applying for credit.

I note that the Complainant has made several efforts to have the CCR report amended. The Complainant sent a letter of complaint to the Provider dated **25th June 2019** in respect of his credit record. He outlined that the Provider had been made aware of his bankruptcy but that it was clear from a copy of his credit report that the Provider continued to report him to the credit agency.

/Cont'd…

The attached credit report showed that as of **May 2019**, an outstanding balance of €12,975 continued to be reported to the CCR. The report suggested that more than 11 payments were past due, and that the next repayment date was **27 June 2019**.

The complaint was acknowledged by letter dated **3rd July 2019**. By letter dated **23rd July 2019**, the Provider wrote to him as follows:

> "*We note your concerns over your credit record in circumstances where you have been discharged from bankruptcy.*
>
> *The information provided to the Central Credit Register is not false as alleged in your correspondence but in fact your liability for the debt has been removed as a result of your bankruptcy.*
>
> *We have forwarded your correspondence to our solicitor for their advices in relation to any action that is required to be taken and will correspond with you further on receipt of these advices*."

The Provider emailed the ILCU on **1 August 2019** with the following query:

> "*Do you know how do credit unions handle a member who has been declared bankrupt regarding returns to the CCR going forward. My understanding is that the details continue to be provided to CCR for the next 5 years. We have a member in that circumstances who is complaining that we should not now be returning his arrears details given his bankruptsy (sic)*
>
> *Do you know what is the requirement here*?"

By email dated **6 August 2019**, the ILCU responded by quoting a small segment of the Guidance document to the effect that loans subject to bankruptcy are reportable and an event of bankruptcy is not reportable. There was no reference to the section of the Guidance which deals with loan write offs or a scenario where the Provider was no longer pursuing the debt.

By letter dated **31st July 2019**, the Provider wrote to the Complainant and stated that it had taken the necessary course of action and that the matter was at an end.

Following engagement from this Office, by letter dated **2nd October 2019**, the Provider wrote to the Complainant as follows:

> "*As previously advised the information provided by us to the Central Credit Register is not false as alleged in your correspondence but in fact <u>your liability for the debt has been removed</u> as a result of your bankruptcy.*
>
> [My underlining for emphasis]

/Cont'd…

We would have no issue with removing your record from our mandatory returns to the CCR however we risk being in breach of the existing regulations in this matter by so doing. Our advice has been that we continue to be obligated to include your record when making CCR returns. Accordingly, pending further direction from either the courts or the Central Credit Register we will continue to abide by our legal obligations."

Thereafter the Complainant followed up with an insolvency practitioner and the ISI seeking advice. He sent an amendment request to the CCR in **2020** outlining that he had been declared bankrupt in **October 2016**, had been discharged from bankruptcy in **October 2017**, and that the Provider had continued to report the loan despite being aware of his bankruptcy. The CCR sent the request to the Provider by email dated **5 May 2020** and asked it to confirm the position.

The Provider responded to the CCR by email dated **6 May 2020** that there was no amendment to the record required, attaching correspondence between the legal department of the ILCU and CCR (below). The Provider stated that:

"*Our legal advice is consistent with the position outlined un [X]'s response ie that we are required to continue to report the loan to the CCR, unless directed by a Court not to do so. As we have not received any such direction from the Court we feel obliged to continue to include [the Complainant's] account in our CCR reports*."

The ILCU emailed the CCR on **17 April 2020** as follows:

"*Subject: Query re: reporting after a lender (sic) has been declared bankrupt*
…

I have a query that I am hoping you might be able to help me with …

It relates to instances where a borrower is declared bankrupt. Specifically, I wonder what is the CCR's approach to reporting after this.

I refer to the guidance booklet for lender which provides:

'Loans held by CISs that are subject to bankruptcy, judgment or insolvency service arrangement are reportable to the CCR unless there is a specific legal instruction not to do so.

An event of bankruptcy, judgment or insolvency arrangements (sic) is not reportable to the CCR. All other data relating to these loans must be reported."

Can I take it therefore that whilst an event of bankruptcy is not typically reported, the missed loan repayments continue to be reported?"

/Cont'd…

The CCR responded by email dated **17 April 2020** as follows:

> "*As per out recent call, please note that there is no specific field in the CCR for lenders to report bankruptcies, insolvencies etc, and they should continue to report the loan to the CCR, unless directed by the Court not to do so*."

The Complainant raised this issue directly with the ISI by email dated **8 May 2020** asking if it was appropriate that his loan continued to be reported considering that it ought to have been written off in accordance with his bankruptcy.

The ISI responded by email dated **19th May 2020** confirming that the effect of bankruptcy resulted in unsecured debt being written off as against the Complainant personally. The email stated that the writer had spoken to the Provider, and it fully understood that the Complainant had been adjudicated bankrupt and the effect this had on the debt. The email explained that the Provider was continuing to report on the debt on instruction from CBI because the CCR do not currently have an available field for the institution to report that the debt is now in a bankruptcy estate. The email stated that the ISI was scheduling discussions with CBI to seek to find a resolution to this issue.

Although I have found the Provider's conduct to have been unreasonable in this case and I consider it appropriate to direct that the CCR record be amended, I am satisfied on the basis of the above that the Provider has at all times, sought to abide by its legal obligations and it repeatedly sought advice on whether it should continue to report the Complainant's historical debt to the CCR, after the Complainant's discharge from bankruptcy.

I take the view that it is appropriate to accept that the Provider may have been caused some confusion by the information available to it, in the particular circumstances that arose. It seems from the evidence that the ISI's view was that the Central Bank should intervene on this issue. I acknowledge that the Provider indicated at all times that it was happy to amend the report in respect of the Complainant's loan but believed that it was not legally permitted to do so. Although I do not accept the conclusion the Provider drew in this regard, and I am satisfied that the event of bankruptcy was essentially a specific legal obligation to be respected, I am satisfied that the Provider attempted to comply with its obligations. As a result, and although I acknowledge that this issue has caused distress and inconvenience to the Complainant since he became aware of the CCR record, and this may have had some impact on his credit rating (though the extent of this is not clear) I do not consider it appropriate to make a direction for compensation. Rather, I consider it appropriate to direct that the CCR Report be corrected immediately by the Provider and, at that point, the impact on the Complainant of the incorrect reporting since **2017** should be ameliorated.

Since the preliminary decision of this Office was issued in June 2022, the Complainant has submitted evidence of several credit applications he made which were declined. Whilst I accept that evidence, I do not consider it appropriate to form the opinion that if the Provider's reporting to the CCR had been accurate, the Complainant would have succeeded in securing these, or one of these credit facilities. The Complainant's personal circumstances and other details available to lenders from his CCR record, are factors to be assessed by any such individual lender, when considering whether to make credit facilities available.

/Cont'd…

I am conscious that the Complainant has endured some very difficult personal and financial circumstances. Insofar as the Provider's conduct is concerned however, I take the view that I must be conscious of the efforts made by the Provider to report accurately. The Complainant refers to other published decisions of the FSPO, but I am very conscious that in this instance, the provider made significant effort to procure clear information to enable it to report details in the manner required by the law.

It is in that context that I consider it appropriate to refer this decision to the Central Bank of Ireland, so that it can consider what additional information it may make available within the CCR Guidance Notes or the Frequently Asked Questions, in relation to the CCR. It may be possible for the Central Bank in that way, to clarify the obligation of financial service providers, to write-off an unsecured debt when that liability ceases to exist, as a result of a borrower being adjudicated bankrupt.

Conclusion

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

- Pursuant to ***Section 60(4)(a)*** of the ***Financial Services and Pensions Ombudsman Act 2017,*** I direct the Respondent Provider to rectify the conduct complained of by immediately notifying the CCR that the loan at issue was written off by the Provider in **October 2016** and by requesting the CCR to amend its records accordingly.

- The Provider is also required to comply with ***Section 60(8)(b)*** of the ***Financial Services and Pensions Ombudsman Act 2017.***

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

MARYROSE MCGOVERN
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN (ACTING)

7 September 2022

/Cont'd…

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.