



<b><u>Decision Ref:</u></b>	2020-0346
<b><u>Sector:</u></b>	Banking
<b><u>Product / Service:</u></b>	Personal Contract Plans
<b><u>Conduct(s) complained of:</u></b>	Fees & charges applied Delayed or inadequate communication Dissatisfaction with customer service Disputed transactions Failure to advise on key product/service features
<b><u>Outcome:</u></b>	Rejected

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

The Complainant entered into a Personal Contract Plan (**PCP**) to finance the purchase of a car in **January 2016**. On the expiry of the term of the agreement, the Complainant became aware of a documentation fee and a completion fee which were not explained to him when he entered into the finance agreement. The Complainant made a complaint to the Provider in respect of these fees and while his complaint was being investigated, the Provider attempted to debit his account with the final instalment under the finance agreement of over €15,000 without first notifying the Complainant or seeking his consent to the transaction. Further to this, the Provider required the Complainant to travel to [County Town] to sign a refinance agreement in **2019**.

**The Complainant's Case**

The Complainant explains that he purchased a car in **2016** with the assistance of PCP finance from the Provider. The Complainant states he was told that at the end of the term of the finance arrangement he would have *options*. One of these options was to continue to pay for the car until it was paid off. The Complainant was told he would have to *re-sign* which meant time off work, time gathering documents and a trip to a garage in [County Town]. When presented with the relevant documents for signing, the Complainant noticed two charges: a documentation fee of €75 and a completion fee of €75. The Complainant states that he contested the validity of these charges and refused to pay them.

The Complainant remarks that *"[t]he interest on the balance was 1500 which meant that these charges represented a 10% loading on the contract that was never explained to me upon signing the original terms."*

The Complainant outlines that he made several calls to the Provider *"... explaining my dissatisfaction and insisting that they had no right to add these charges without explaining them in the first place."* At that point in time, the Complainant advises that he had arranged finance from another financial services provider to purchase the car. The Complainant states that *"[t]hey required an invoice from [the Provider] but for whatever reason these two august institutions could not make this happen, again something that was not explained upon original signing."*

While *"... these protracted and very difficult discussions were ongoing, the [Provider] saw fit to clear the outstanding balance of 15 k from my personal account."* The Complainant states this caused serious difficulty for him.

The Complainant explains that he raised a complaint with the Provider and *"[a] senior officer ... then got involved and after being told that 'under no circumstances' could or would the bank waive these fees she chose to cancel half of them."* When the Complainant requested that the remaining fees be cancelled, the Provider advised him that this was not possible. The Complainant states *"[a]t this point I had run out of steam .... I signed the forms that were posted to me (and didn't require a trip to the garage as they had previously insisted). ..."*

In describing his complaint, the Complainant states:

*"So my complaint is in four parts*

- 1. They took a day out of my job to go to County Town to sign docs which could have been sent to me here.*
- 2. they charged me a 10% loading for documentation fees which is exorbitant for 6 printed a4 pages and a completion fee for which i have still not received an explanation. Neither of these fees were explained to me at the original time of signing.*
- 3. [The Provider] while in the middle of a renegotiation felt it was their place and appropriate to empty the account I used to run my house hold without any prior notice or permission.*

*And lastly 4. I was left in no position to use another Lender once I was very dissatisfied with the treatment i received at the hands of this Tutonic Institution. This is, as i see it, a breach of any competition rules that i know of.*

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*Now, they may have a 10 page document from 2016 in which the small print might save them but it is my contention that it is incumbent on the lender to advise me of the limitations in terms of other lenders, the hidden extra fees that are without justification, the bear faced cheek of removing a substantial sum of money from my bank without approval [or] notice.”*

## **The Provider’s Case**

### ***Fees and charges***

The Provider explains that fees are charged for all of its PCP financial arrangements except for 0% finance and bridging loan agreements. A €75 documentation fee is charged with a customer’s first payment and €75 completion fee with the final payment. The Provider submits that these are Central Bank of Ireland approved fees under section 49 of the Consumer Credit Act 1995 and are standard fees applied to all customers.

The Provider states in the case of the Complainant, the €75 documentation fee was not charged as a gesture of goodwill.

### ***Explanation of fees***

The Provider advises that it cannot comment on the particulars of the Complainant’s meetings in the dealership as the Complainant did not take up the refinance deal offered and did not sign/complete the documentation at the time.

The Provider explains that the dealer provides a customer with a Schedule of Fees and Charges, usually at the quotation stage, which are explained to the customer. This is part of the financial sales consultation between the customer and the business manager in the dealership.

For car finance and refinance cases, the fees attaching to the finance are outlined in the contractual agreement which is signed by the customer prior to the drawdown of the facility. The financial terms are outlined on page 1. These are also explained to the customer by the business manager after which they are initialled by the customer. The Provider then receives the completed and signed finance documents from the dealer to enable drawdown. The Provider also points out that a schedule of fees and charges is available on its website.

The Provider explains that the finance agreement clearly outlines the total cost of credit including documentation fees which is initialled and signed by the Complainant.

### ***Re-signing of documents***

The Provider explains that its business model is that customers organise finance contracts in one of over 100 car brand dealerships in its authorised dealer network. With the volume of dealerships and the 6 day week opening hours, this usually proves convenient for customers.

A finance application needs to be completed in a dealership on the Provider's computer system. This requires updated customer demographics and financial details. On sanction of the facility, the contract is printed and signed.

The Provider explains that in relation to this complaint, it was a new refinance agreement hence the Complainant would have to go through the financial application process.

The Provider also submits that the Complainant:

*"... does not specify who told him that he had to make a trip to [County Town] to the garage to sign these documents. I note from his address that the complainant lives and works in [another same in the same County]. The dealership in [County Town] (where the customer went to organise refinance originally) has accommodating business hours i.e. open 6 days per week, Monday – Friday 9 – 5.30 and Saturday 9.30am – 2pm."*

### ***Signing in person***

The Provider states that the Complainant had to go the dealer to organise the finance for his car. There is no other option as all of the Provider's finance is organised through its authorised dealer network on a face to face basis.

When the finance required is to refinance an outstanding balance at the end of term, only one visit to the dealer is required. The Provider explains that the Complainant did not sign up for the refinance in the dealership as he was unhappy with the €150 fees being applied. In **June 2019**, the Complainant opted to refinance with the Provider and the refinance application was completed centrally in the Provider's head office.

The Provider states that the Complainant's guaranteed minimum value (**GMV**) balance of €15,000 was outstanding from early **March** to mid **June 2019**.

Following this, the Provider explains:

*"This is not our business model and was an exception to our process.*

*The refinance contract documentation was posted out to the complainant who signed it, got it witnessed and returned it. ... A further €70 internal completion fee was waived ...*

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*We didn't advise the complainant of this fee being waived as we wanted to make this transaction as convenient and hassle free as possible for the complainant. To centrally complete a refinance is not our standard practice and was only done as an exception with a view to trying to satisfy the customer."*

### ***Finance from another Provider***

The Provider states that its Operations Manager was very flexible in her approach to the Complainant. It is submitted that the Complainant could have obtained finance from any financial institution but it appears that this could not be in the form of a car finance facility as an invoice for the actual asset was required by the financial institution. The Provider explains that as this was a refinance transaction, there would not have been any invoice as is the case when the vehicle was first purchased.

The Provider submits that every effort was made to support the Complainant in obtaining alternative finance. This involved telephone calls by the Provider to the alternative financial services provider.

The Provider states that the Complainant had an issue with the fact that the Provider could not furnish an invoice for the sale of the car so that he could obtain *Used Car Finance* with the applicable interest rate from another financial services provider. The Provider explains this was not possible for a number of reasons. As a financial institution, the Provider:

- does not sell cars or provide an associated warranty;
- the customer is in possession of the vehicle with finance owed on it; and
- a transaction of a used car finance is not a GMV extension product. A GMV extension product is usually by way of a personal loan which generally carries a higher interest rate as it is not secured by the vehicle.

The GMV extension product is a new requirement so it may not have been initially clear to the financial services provider when requested by the Complainant that it was for this purpose the facility was required. Hence, the Complainant would have been asked for an invoice and given a lower interest rate for a *Used Car Product*.

The Provider states that it did not withhold documentation from the Complainant. There was no new or used car purchase taking place so no invoice could be supplied. This was explained to the Complainant on a number of different occasions. The Provider submits this did not preclude the Complainant from obtaining finance from an alternative financial services provider. The Provider explains the finance required was to clear the balloon value on the existing vehicle.

### ***Attempts to withdraw €15,000***

The Provider explains that the Complainant received three separate end of contract letters: six months, three months and one month before his GFV payment was due in **March 2019**. The three month and one month letters specified that €15,000 would be debited on **5 March 2019**.

Additionally, the Provider states that when the original PCP agreement was availed of in **2016**, the Complainant's welcome letter enclosed a copy of the finance agreement dated **18 January 2016** outlining the high level details of the finance agreement including the final payment of €15,000.

### **The Complaints for Adjudication**

The complaints are that the Provider:

1. Unreasonably required the Complainant to travel to [County Town] to complete/sign the refinance agreement;
2. Charged an exorbitant documentation fee and completion fee;
3. Attempted to withdraw €15,000 from the Complainant's bank account without prior notice or permission; and
4. Denied the Complainant the opportunity to obtain finance from another financial services provider.

### **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.

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A Preliminary Decision was issued to the parties on 29 July 2020, outlining my preliminary determination 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 issue of my Preliminary Decision, the Complainant made a further submission under cover of his e-mail to this Office dated 29 July 2020, a copy of which was transmitted to the Provider for its consideration.

The Provider has not made any further submission.

Having considered the Complainant's additional submission and all of the submissions and evidence furnished to this Office by both parties, I set out below my final determination.

The Complainant's post Preliminary Decision submission of 29 July did not raise any new points. It reiterated previous points and was more an expression of his dissatisfaction with my Preliminary Decision.

### ***The Finance Agreement***

The Complainant signed a finance agreement on **5 January 2016**. This is a six page document and each page has either been signed or initialled by the Complainant. On the first page of the agreement at Part 3, the Complainant is advised of costs of the finance agreement. These costs are set out in a table format with rows 6 and 7 highlighting a *Documentation Fee* of €75 and a *Completion/Purchase Instalment* of €75. These fees are accompanied by the following explanations:

*\*\* Documentation Fee is payable with the first instalment/direct debit*

*\*\* Completion/Purchase Instalment is payable with final instalment/direct debit."*

Beside this table is a further table called *Schedule of Payments*. This states that the first instalment under the finance agreement shall be €488.01 followed by 35 monthly instalments of €413.01, with a final instalment of €15,075.00.

The Complainant signed page 3 of the agreement which states:

#### ***"Hirer Consent***

*By signing below, I/We confirm that I/We have read and agree to be bound by the terms and conditions set out in this Agreement ...*

/Cont'd...

### **Acceptance by Hirer**

*We have read, and agree to be bound by the terms and conditions set out in this Agreement (which includes this Schedule and the attached direct debit mandate and terms and conditions). ...”*

The Provider wrote to the Complainant by letter dated **18 January 2016**, enclosing a copy of the finance agreement. This letter also advised as follows:

*“Please find below payment schedule detailing the specific dates on which each direct debit payment will be made from your account ... This constitutes pre-notification for the purposes of the Irish Payment Services Organisation/European Payments Council SEPA Core Direct Debit Scheme Rulebook:*

*First Payment ...*

*Followed by 35 payments ...*

*Final Payment (including €75.00 completion fee) of €15075.00 on 5<sup>th</sup> March 2019*

*Please note that payments will be collected on dates above unless that day falls on a non-business day ...”*

### **Expiry of the Finance Agreement**

On **6 September 2018**, the Provider wrote to the Complainant to inform him that there were only six months left on his finance agreement:

*“With only six months remaining of your [finance agreement] we at [the Provider] felt that now is a good time to remind you of the flexible options afforded to you by this product:*

*...*

*If you do not contact us we will assume that you intend to keep your car and will take the final instalment by direct debit as per your [finance agreement].”*

This was followed by a letter dated **6 December 2018** advising the Complainant that there were three months left on his finance agreement and a letter on **4 February 2019** advising the Complainant that there was only one month left on his finance agreement. I note that both of these letters state that the final instalment date is **5 March 2019** with the final instalment amount being €15,075.00.

The Provider wrote to the Complainant on **24 April 2019**, to inform him that it attempted to debit his account with the final instalment but was unable to do so.

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### ***Alternative Finance***

The Provider wrote to the Complainant by email and letter dated **26 April 2019** and **2 May 2019** advising him as follows:

*"I have made contact with your contact ... in [third party financial services provider], he referred me to ... as he did not have the information detail required.*

*I made several attempts to contact [third party financial services provider] and finally got to speak to a lady there this morning. ... we clarified in principal that under a personal finance loan with [third party financial services provider] no invoice would be required.*

*The loan you require is to extend finance on a PCP balloon value and is not a new car loan as such and therefore no new vehicle purchase is taking place. This is why as we have previously advised we have never been asked to provide any documentation to any financial institution on behalf of a customer.*

*To clarify, if you were purchasing a new car through a Dealership the invoice would be supplied from them directly to the financial institution ..., as your requirement is not a new vehicle purchase transaction but is an extension of finance. The [third party financial services provider] I spoke with advised that you should contact them directly to ensure the correct product has been applied for in your case.*

*This matter is for you and [financial services provider] to establish the most suitable product and offer required for your financial needs.*

*We have made every effort to provide support in order to resolve this matter for you and contacted [your third party financial services provider] directly outside of our normal procedures to aim to assist you with the clarification of this matter. ..."*

### **The First Complaint**

The Complainant entered into a finance agreement with the Provider in **January 2016**. This was due to expire in **March 2019**. In order to enter into a finance agreement or a refinance agreement, it is the Provider's policy that this is done in one of its dealerships. The Provider advises that it has over 100 dealerships throughout the country which are open Monday to Saturday.

I do not consider the Provider's requirement to sign a finance agreement or a refinance agreement in one of its designated dealerships to be unreasonable; particularly given the number of dealerships and their opening hours. Furthermore, the dealership attended by the Complainant was in [County Town] and I note that the Complainant also resided in the same County.

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### **The Second Complaint**

The fees which the Complainant is dissatisfied with are clearly stated on the first page of the finance agreement. This agreement was signed by the Complainant in **January 2016**. In addition to this, the page containing these charges was initialled by the Complainant. The completion fee was also referred to on the letter issued by the Provider on **18 January 2016**.

As such, I am not satisfied that the Provider failed to make the Complainant aware of these fees or bring them to the Complainant's attention. If the Complainant felt that these fees were exorbitant, he could have chosen not to have accepted the agreement.

### **The Third Complaint**

The first page of the finance agreement contains a *Schedule of Payments* and states that the final instalment under the agreement shall be €15,075.00. Further to this, the Provider's letter dated **18 January 2016**, clearly states that the final instalment under the agreement would be due on **5 March 2019** in the amount of €15,075.00.

The Provider also issued the Complainant with three letters in the months leading up to the expiry of the agreement. The first letter issued on **6 September 2018** and advised the Complainant that the Provider would take the final payment as per the finance agreement.

The next two letters issued on **6 December 2018** and **4 February 2019**. Both of these letters state that the final instalment date was **5 March 2019** with the final instalment amount being €15,075.00.

I accept that the Provider made reasonable efforts to make the Complainant aware of the final instalment date and the final instalment amount. Furthermore, there is no evidence to suggest that the Provider agreed to postpone collection of this instalment or that the Complainant made any such request, pending the Provider's investigation of his complaint. Accordingly, the Provider was entitled to seek payment of the final instalment on **5 March 2019**.

### **The Fourth Complaint**

The Complainant explains that he encountered difficulty obtaining alternative finance due to the Provider's lack of co-operation and the fact he was not made aware of any potential constraints on his ability to obtain finance from other financial service providers due to the nature of the finance agreement he was entering into with the Provider.

The Provider was unable to furnish the Complainant with an invoice regarding the purchase of the car owing to the nature of the finance agreement, the fact the Complainant was seeking to refinance and the Provider's position as a financial services provider. It is also clear that the Provider made reasonable efforts to assist and accommodate the Complainant in his efforts to seek alternative finance.

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Furthermore, I do not accept that the Provider was required to advise the Complainant at any point, about the lending requirements or lending criteria of other financial service providers or the implications regarding future financing or refinancing of the finance agreement or alternative car finance options with other financial service providers.

For the reasons outlined in this Decision, I do not 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 rejected.

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



**GER DEERING  
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

8 October 2020

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.**