



<u>Decision Ref:</u>	2022-0218
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Debt Management
<u>Conduct(s) complained of:</u>	Arrears handling Delayed or inadequate communication
<u>Outcome:</u>	Substantially upheld

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

On **27 September 2005** the Complainant successfully applied for and drew down a loan of **€5,000** from a loan owner.

Since **2012**, the respondent Provider, through its debt recovery arm, manages the loan on behalf of the loan owner. This complaint concerns the Provider's communications with the Complainant regarding his payment of *"agreed to monthly instalments"*.

The Complainant's Case

The Complainant contends that he has been treated unfairly and incorrectly by the Provider which manages his borrowing on behalf of the loan owner.

The Complainant is unhappy with this treatment as he contends that since early **2018**, he has been subjected to *"a campaign of 'badgering'"* by the Provider regarding the suggested non-payment of *"a debt owed to [the loan owner]"*.

The Complainant maintains that he requested from the Provider *"a complete up-to-date statement"* of his account in two letters dated **2 March 2018** and **21 March 2018** respectively but he did not receive this information. The Complainant also submits that he requested an explanation from the Provider, without success, *"regarding missing payments from its financial statement of 9th January 2019"*.

The Provider's Case

The Provider acknowledged the Complainant's complaint in its letter dated **28 November 2017**. (It is assumed that this should have been correctly dated **28 November 2018**). The Provider states in this letter:

"I have reviewed your letter together with the notes on our system however I am no closer to understanding the exact nature of your complaint. Based on my review you appear to have an issue with receiving an Income and Expenditure form and are requesting additional time to complete same, although this is not clear from your correspondence".

The Provider states in its formal response to the investigation of this Office, received on **11 March 2020**, that its internal systems manage customer contact, and automatically generate a customer contact, when a customer who is on a payment plan, misses a payment. The Provider submits that on several occasions, it asked the Complainant to provide evidence or receipts for the disputed payments, stating that it would be happy to investigate further but that nothing was received from the Complainant.

The Provider in its formal response to this Office, in **March 2020**, contended that it had no unreconciled amounts pending in its accounts, and that these accounts are reconciled on a daily basis.

The Provider acknowledges that by telephone on **30 January 2018** and **28 February 2018**, the Complainant requested that statements be issued to him, and it says that *"Notes on account confirm statements were issued on both occasions"*.

The Complaint for Adjudication

The complaint is that the Provider was guilty of maladministration insofar as it:

- Wrongfully stated that the Complainant missed several loan repayments in 2017-2018, and contacted him repeatedly about the matter;
- Failed to furnish the Complainant with a statement of his account, when requested;
- Proffered poor customer service throughout the period **November 2018** to date.

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.

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In arriving at my Legally Binding Decision, I have carefully considered the evidence and submissions put forward by the parties to the complaint. Having reviewed and considered the submissions made by the parties to this complaint, I am satisfied that the submissions and evidence furnished did not disclose a conflict of fact such as would require the holding of an Oral Hearing to resolve any such conflict. I am also satisfied that the submissions and evidence furnished were sufficient to enable a Legally Binding Decision to be made in this complaint without the necessity for holding an Oral Hearing.

A Preliminary Decision was issued to the parties on **3 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. In the absence of additional substantive submissions from the parties, within the period permitted, the final determination of this office is set out below.

Correspondence between the parties

16 November 2018 - Letter from the Complainant to Provider

"... requested a complete up-to-date statement of my account, it seems that you have chosen not to do so..... This is extremely disappointing!

.... not addressed the issue of the seeming possible problem denoted by the repeated text messages and phone calls from your office which I would describe as badgering.

.... I now have no option but to lodge an official complaint to your office regarding this issue in the hope that you might treat my request seriously."

23 November 2018 - Letter from the Complainant to Provider

"Perhaps you the [Provider] might be kind enough to request your staff cease making demands of me until you have completed your investigation of my complaint/s and issue a Final Response letter as required."

28 November 2018 - Letter from the Provider to the Complainant (incorrectly dated 2017)

"Based on my review you appear to have an issue with receiving an Income and Expenditure Form and are requesting additional time to complete same, although this is not clear from your correspondence...

..... if you have some further issue or complaint, you might put same in writing...."

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13 December 2018 - Letter from Complainant to Provider

"It seems you do not understand the exact nature of mv complaint".

9 January 2019 - Letter from the Provider to the Complainant

"Many thanks for completing the Income and Expenditure Form and we note your financial position and offer of €5.00 per month. Based on the financial information provided we are happy to accept this payment plan which will be reviewed in 12 months"

24 January 2019 - Letter from the Complainant to the Provider

*"I categorically reject your financial statement however. It is false and misleading, and conveniently provides excuse for the 'badgering' campaign as noted earlier..... if you look through the date column as far back as early **2017** it appears that only one payment was made in the three months between **Feb-and-June 2017**.... This is untrue!"*

29 January 2019 - Final Response Letter from the Provider to the Complainant

"The content of your letter make little sense and I am unsure what exactly you require. If it is a final response letter, then please treat this letter as a final response letter for the purposes of any complaint or additional action you may wish to take...."

5 June 2019 - Letter from the Provider to the FSPO

*" confirm that our letter of **29 January 2019** was our Final Response Letter in this matter.*

.... feel that the [Provider] has at all times complied with our obligations under the Consumer Protection Code 2012 in our dealings with the [Complainant]."

11 March 2020 - Provider's formal response to FSPO

*"....as evidenced on the statements provided, the [Complainant] has missed payments in **March 2017, May 2017, April 2018 and October 2018**. The [Complainant] is not in agreement with this position ...*

*The Provider received a letter dated **2 March 2018** from the Complainant requesting a change of address which was actioned on the **15 March 2018** and another statement was issued.*

*.... received additional correspondence on the **28 March 2018 (dated 21 March 2018)** from the [Complainant] requesting another statement. As per the notes provided the [Complainant] stated the page 2 of the previous statement he received was omitted so the [Provider] re-issued again.*

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*A formal complaint was received from the [Complainant] on **26 November 2018** (dated **23 November 2018**)”*

24 March 2020 - Letter from Complainant to FSPO

“..... despite my repeated assurances the [Providers’] staff refused to accept that their accounting system could possibly be in error, thereby refusing to co-operate by conducting an internal investigation of my account.

...

*The attached copy of receipted payment of **30th May** in the sum of E10 should prove beyond doubt that the [Provider’s] statement of account is in fact erroneous, as I have continuously claimed, and which the [Provider] continues to deny”.*

24 March 2020 - Email letter from the Provider to the FSPO

*“.... note that the [Complainant], in his latest correspondence, has provided a receipt for a payment made on **30th May 2017**.*

...

Unfortunately, the money when reconciled was assigned to another customer’s account.”

STATEMENTS OF ACCOUNT

Copy of Loan Statement 23 February 2017 to 28 June 2017

23/02/2017	Payment Received	5.00	4,253.00	Bank payment 22380267
26/04/2017	Payment Received	5.00	4,248.00	Bank payment 22380267
28/06/2017	Payment Received	5.00	4,243.00	Bank payment 22380267

Copy of Loan Statement 28 March 2018 to 1 November 2018

28/03/2018	Payment Received	5.00	4,193.00	Bank payment 22380267
30/05/2018	Payment Received	5.00	4,188.00	Bank payment 22380267
27/06/2018	Payment Received	5.00	4,183.00	Bank payment 22380267
27/07/2018	Payment Received	5.00	4,178.00	Bank payment 22380267
29/08/2018	Payment Received	5.00	4,173.00	Bank payment 22380267
27/09/2018	Payment Received	5.00	4,168.00	Bank payment 22380267
01/11/2018	Payment Received	5.00	4,163.00	Bank payment 22380267

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Telephone Calls

Recordings of 14 telephone calls between the Complainant and the Provider were submitted by the Provider as part of the evidence in its formal response to the investigation of this Office. These occurred over the nine-month period between **1 May 2018** and **30 January 2019**.

1 May 2018

Provider states: *"... no payment since **March** on the account
..... currently shown €10 in arrears*

Complainant states: *well, that's wrong*

Provider states: *why is that wrong [Complainant]?*

Complainant states: *well, you better find that out for yourself
..... I am not responsible for your systems"*

29 June 2018

Provider states: *"... the problem is that it is in arrears*

Complainant states: *... what you're saying is you will be making calls to me as long
as I don't pay you what you tell me I owe you and I say I don't
....*

Complainant states: *.....sure I have a statement....."*

Analysis

The Complainant maintains that the Provider incorrectly stated that he had missed loan repayments and contacted him repeatedly in this regard. The Provider's position is that *"the [Complainant] has missed payments in **March 2017, May 2017, April 2018 and October 2018**"* and that the statements it produced demonstrated that these payments had not been made. The Provider submits that it asked the Complainant to produce receipts to support his contention that he had made the payments to the account.

During the investigation, on **24 March 2020**, the Complainant submitted a *"copy of receipted payment of **30th May** [2017] in the sum of E10"* which he stated, *"should prove beyond doubt that the [Provider's] statement of account is in fact erroneous, as I have continuously claimed, and which the [Provider's] continues to deny"*.

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Previously the Provider had stated its position, that

“it has no unreconciled amounts pending in its accounts and that the accounts are reconciled on a daily basis.”

Following the submission of the receipt by the Complainant, the Provider then discovered that this money, when reconciled in May 2017, had been assigned to another customer’s account.

It is clear from this that the Provider was incorrect in stating that the Complainant had missed this particular payment, and it raises the question as to whether it has made additional similar errors. It is also clear that the Complainant was given incorrect information regarding that payment, over the phone, suggesting that the Complainant’s account was in arrears for the amount of €10, over a prolonged period of time, despite his repeated statements to the contrary. Indeed, it is disappointing that even after the Complainant submitted this copy lodgement slip, the Provider did not make any meaningful effort to resolve this issue with the Complainant.

In those circumstances, I take the view that this error by the Provider was unfair to the Complainant, and it was unreasonable conduct on its part within the meaning of **s60(2)(b)** of the **Financial Services and Pensions Ombudsman Act 2017**.

I am conscious that the Complainant has not evidenced payment of the other three disputed transactions, but given the error made by the Provider regarding his payment in **May 2017**, I take the view that there is a question over the reliability of the Provider’s record keeping, such that I cannot accept that the Provider’s view of those missed payments is necessarily correct.

The Complainant also submits that the Provider did not furnish him with a statement of his account, when requested. He maintains that he requested “*a complete up-to-date statement*” of his account, in two separate letters dated **2 March 2018** and **21 March 2018**, but that he did not receive this information. The Provider has furnished evidence that statements were sent to the Complainant as requested on **30 January 2018** and **28 February 2018**. The Provider states that it subsequently received a letter dated **2 March 2018** from the Complainant requesting a change of address to be noted, which was actioned on the **15 March 2018** and another statement was then issued to him.

The Provider also notes that the Complainant, in his letter dated **21 March 2018**, advised that page 2 of the statement had been omitted by the Provider following which a second statement was then issued to him. In addition, the Complainant states during a call on **29 June 2019** “*.....sure I have a statement...*”

Therefore, I am of the view that the Provider made reasonable attempts to provide statements to the Complainant, at his request, though it seems that somewhat inconveniently for the Complainant, one such statement may have omitted a page.

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The Complainant contends that the Provider was guilty of poor customer service to him, from early **2018** onwards. I note that, initially, when the Complainant stated that he had not missed payments, the Provider asked the Complainant to furnish receipts for the payments in question, which I accept is likely to have assisted the Provider in any investigation to be undertaken.

Subsequently, when the Complainant submitted a lodgement slip in evidence, the Provider acknowledged its error in relation to that payment, but it does not appear to have investigated the other *'missed payments'* disputed by the Complainant.

Given that the Provider appears only to have investigated one of the missed payments thoroughly, and only when the Complainant ultimately produced a lodgement slip, I take the view that the Provider could have done more to assure the Complainant regarding steps taken to locate any other missing payments.

I note that, during the phone calls, when the Provider told the Complainant that he was in arrears and he had missed payments, his statements that he had not missed payments, were not treated as a complaint at any time, despite him stating this on several occasions.

I accept that that during these calls, the Providers' staff made every effort to assist the Complainant's understanding of the requirement to answer security questions and in trying to assist with the issue of the apparent arrears on the account. It is noteworthy that on some occasions the Complainant refused to answer the security questions and was sometimes unwilling to assist in trying to bring the matter to a satisfactory conclusion. This was not helpful.

However, it has transpired that the Complainant made the payment due of **€10** on **30 May 2017** and, through no fault of his, this amount was not applied correctly to his account, as it should have been by the Provider. In this instance, the Provider failed to identify that this payment was made by the Complainant and instead applied it to the wrong account. The Provider, in my view, does not appear to have undertaken a full investigation of checking the transactional logs for the dates and amounts in question and this contributed to continued contact being made with the Complainant which I consider to have been unsatisfactory, especially as the Complainant had asked the Provider to

"request your staff cease making demands of me until you have completed your investigation of my complaint/s and issue a Final Response Letter as required."

The Provider submits that the Complainant made a complaint on **23 November 2018**, but it is clear from his earlier letter of **16 November 2018**, that he wished to make a formal complaint at that time. This appears not to have been noted by the Provider until the subsequent letter from the Complainant, a week later, by which point the complaint ought to have been acknowledged.

On foot of these letters, the Provider issued a Final Response Letter to the Complainant, on **29 January 2019**, which contained little substance, and instead stated that

“The content of your letter make little sense and I am unsure what exactly you require.”

I acknowledge that the Provider maintains that it did not understand the nature of the complaint, but this brief response was, in my opinion, singularly unhelpful and did little to advance the prospects of the resolution of the complaint. I do not accept that this lack of understanding was sufficient reason for the Provider not to seek to more adequately address the Complainant’s complaint, or to at least endeavour to gain a better understanding of the complaint.

In my opinion it was less than helpful of the Provider to issue a Final Response Letter which utterly failed to address any element of the complaint and failed to recognise the principles of the Consumer Protection Code 2012, or seek to comply with its regulatory obligations, in relation to complaint handling. I take the view that this was unfair to the Complainant, and it was unreasonable conduct by the Provider, within the meaning of **s60(2)(b)** of the ***Financial Services and Pensions Ombudsman Act 2017***.

Based on the foregoing, I take the view that the Provider failed:

To act with due skill, care and diligence in the best interests of the Complainant contrary to its obligations under General Principle 2.2 of the Consumer Protection Code 2012 (“CPC”);

To correct errors and handle the complaints raised by the Complainant speedily, efficiently or fairly contrary to its obligations under General Principle 2.8 of the (“CPC”) and;

To maintain complete and readily accessible records for the Complainant contrary to its obligations under Provision 11.7 of the (“CPC”);

The Provider’s regulatory failures are illustrated by the fact that the Provider was unable to locate a payment made by the Complainant in **May 2017**. This resulted in what the Complainant describes as *“a campaign of ‘badgering’*. I accept that the level of contact in the circumstances was excessive, especially as the Complainant had asked the Provider to *“request your staff cease making demands of me until you have completed your investigation of my complaint/s and issue a Final Response Letter as required”*.

Having carefully considered all the submissions and evidence and for the reasons set out above, I consider it appropriate to substantially uphold this complaint. Bearing in mind what I consider to be the unreliability of the Provider’s records of the Complainant’s payments, and the error it made regarding the Complainant’s payment in May 2017, therefore even in the absence of any objective evidence from the Complainant to demonstrate the other three payments made, I consider it appropriate to give the benefit of the doubt the Complainant, in that regard.

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I am conscious of the inconvenience caused to the Complainant by the conduct of the Provider and to mark my findings in this matter, I consider it appropriate to direct the Provider to rectify the conduct complained of, pursuant to **Section 60(1)(a)** of the **Financial Services and Pensions Ombudsman Act 2017**, by crediting the Complainant's account with the value of the three disputed payments he says he made in **March 2017, April 2018 and October 2018**, with effect from those dates, and I also consider it appropriate to direct pursuant to **Section 60(1)(d)** of the **Financial Services and Pensions Ombudsman Act 2017**, that the Provider make a compensatory payment to the Complainant, as directed below.

Conclusion

- My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is substantially upheld, on the grounds prescribed in **Section 60(2)(b)**.
- Pursuant to **Section 60(4) and Section 60 (6)** of the **Financial Services and Pensions Ombudsman Act 2017**, I direct the Respondent Provider to rectify the conduct complained of by crediting the Complainant's account with the value of the three disputed payments he says he made in **March 2017, April 2018 and October 2018**, with effect from those dates. I also direct the Provider to make a compensatory payment to the Complainant in the sum of €700 (seven 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)

29 June 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.