



<u>Decision Ref:</u>	2018-0035
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Repayment Mortgage
<u>Conduct(s) complained of:</u>	Refusal to grant mortgage Failure to provide correct information
<u>Outcome:</u>	Substantially upheld

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

The Complainants are husband and wife. In November 2015, they submitted a mortgage application to the Bank to borrow monies to purchase a Private Dwelling Home (PDH). This application was declined by the Bank and the Complainants appealed this decision.

The Complainants' complaint is that, prior to submitting a further application to the Bank, they were incorrectly given to understand by the Bank that the existence of a moratorium arrangement on their previous borrowing, with a third party bank, would not prejudice their application to the Bank for the home loan in question. This information was incorrect however. The Bank, again, in March 2016, declined the Complainants' application, as the existence of the moratorium placed them outside the Bank's acceptance criteria.

The Complainants' Case

The First Complainant submits that when he and his wife first applied for a mortgage with the Bank (in or about November 2015), in the sum of €100,000, it was refused due to negative indicators featuring on his ICB record.

The First Complainant submits that he then *"offered to guarantee my savings of 140,000 euros and I was told no."* The Complainant submits that he subsequently resolved the arrears issue on his ICB report with the third party bank, with the assistance of this Office. The Complainant submits that in the course of resolving the issues with the third party bank, he contacted the Bank and asked whether the Bank needed him to have the moratorium removed. He submits that he was advised by the Bank that this was not necessary and that

the existence of the moratorium would not prejudice his application, once he could explain the circumstances giving rise to the moratorium.

The First Complainant submits that getting his ICB record amended was a long process and that he had enquired of the Bank, before he re-applied for the mortgage loan, whether there would be any further issues with it, before he went through the whole process again. He submits that he made these enquiries as he *“did want to put my wife or myself through this awful process again”*.

The Complainant submits that he was told by the Bank that there would be no problem but contrary to this advice, and *“after another long process”*, the Bank refused the Complainants’ application because of the presence of the moratorium on the ICB record, which decision was communicated to the Complainants on 23rd March 2016.

The Provider’s Case

The Bank submits that, in November 2015, the Complainants submitted a mortgage application, seeking €100,000.00 towards the purchase a new Private Dwelling House.

The Bank submits that upon its initial review of the application, in November 2015, it was declined, on the basis that an adverse ICB record had been reported by a third party bank (the Complainants’ previous mortgage lender). The Provider submits that the First Complainant explained to it that the arrears on the ICB record, as reported by the third party bank, were incorrect.

The Bank acknowledges that, on the 26th February 2016, incorrect information was furnished to the First Complainant regarding the effect of a record of a previous moratorium, on the intended mortgage application. The Bank submits, however, that it should be noted that, during the course of the telephone communications, no commitment was given to approve the Complainants’ application and it submits that the First Complainant was fully aware that the application remained subject to full credit assessment and approval.

The Bank submits that the Complainants’ re-application was reviewed, in March 2016, and upon review, it informed the Complainants that as the ICB record still showed that a moratorium had been negotiated on their mortgage for a period of five months, the Bank was not in a position to approve the application.

The Bank acknowledges that a Sales Agent of the Bank gave an opinion on how the Complainants’ ICB record may be considered by underwriting. It submits that while this was unfortunate in that it led the Complainants to understand that the moratorium would not negatively impact their application, it gave no commitment that the application would be approved. The Bank submits that, per its practice and procedures, before it proceeds to carry out a full credit assessment, all credit applications are initially subject to an ICB check. It says that the Complainants’ application was not assessed any further once it was determined by the Bank that the Complainants’ ICB record placed them outside the Bank’s credit criteria. It says that in light of the incorrect information which the Complainants received from the Sales Agent, however, the Bank agreed, by way of appeal, to proceed to

/Cont’d...

carry out a full credit assessment of the Complainants' application, in order to determine whether the application could be approved notwithstanding the ICB record. The Bank submits that this full assessment of the Complainants' application, is detailed in the Bank's credit committee minutes of 22 April 2016.

It submits that, the outcome of the appeal, by way of full assessment, was that the adverse ICB record was not the only negative factor in the Complainants' case. The Bank says that the minutes of the Credit Committee meeting outline that a moratorium and missed credit card payments alone, were not in themselves, sufficient to decline the application. It says that these factors, coupled with the age of the Second Complainant and the question over the sustainability of the Complainants' income, led to the decline.

The Bank submits that full cognisance was given to the personal and financial details of the Complainants and the appeal was given a fair and thorough assessment in accordance with the Bank's processes and procedures. It submits that its decision to decline remained unchanged, however.

The Bank submits that it considers that the decision to decline the Complainants' application remains a matter of commercial discretion for the Bank.

It has offered the Complainants a Customer Care Award of €150.00, in recognition of the incorrect information which was provided to them.

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 Complainants were 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 10 May 2018, 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

/Cont'd...

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 submissions from the parties, the final determination of this office is set out below.

I note the following timeline of events –

- 12th November 2015:** Complainants' initial loan application received by the Bank.
- 26th November 2015:** Complainants' loan application declined by the Bank.
- 26th February 2016:** During a telephone call with the Bank, confirmation was provided to the First Complainant that the record of a moratorium, with a previous provider, on his ICB report, would not prejudice his loan application.
- 15th March 2016:** Complainants re-submitted their loan application to the Bank.
- 29th March 2016:** Complainants' re-application declined.
Complaint registered with Bank by the Complainants.
- 22nd April 2016:** By way of appeal, a full assessment of Complainants' application was carried out by the Bank's Loan Credit Committee. Appeal declined.
- 03rd May 2016:** Final Response Letter issued by the Bank.

When the Complainants' initial loan application was declined by the Bank, it wrote to the Complainants, by letter dated 26th November 2016, advising them that:

"We regret to inform you that following an assessment of your loan application and supporting documentation we have decided not to proceed with your loan application because:

Your loan application is outside [the Bank's] Credit Criteria.

The Bank has subsequently indicated that its decision to decline was due to the Complainants' ICB report showing two missed mortgage repayments and a five month moratorium. After the Complainants' application was initially declined, the First Complainant contacted the Bank and began arranging an appeal of the Bank's decision. The First Complainant proceeded to have many conversations with a Sales Agent of the Bank during the period between November 2015 and March 2016, and many of these conversations centred around the topic of the Complainants' ICB record.

In relation to the mortgage arrears which had been reported to the ICB, by the third party Bank, the First Complainant advised that it been as a result of the error of the third party

/Cont'd...

bank that this had occurred. The First Complainant advised the Bank's Agent that he was seeking to have the ICB record amended and had engaged the services of this Office, in that regard.

On the 25th January 2016 the Complainant told the Bank Agent that he *"can't understand why you are putting me through the ropes like this."* The Bank Agent advised that *"effectively, all that is wrong with ourselves here is that any issues with the ICB they don't proceed on them. That's effectively the be all and end all with it. Once there is anything showing up on any ICB that can't be either exonerated by the financial institution is basically a no-no effectively."* He advised, in relation to *"getting around the ICB"*, that, *"ultimately speaking, like, if the ICB, if there is any issues with it, ultimately what they look for is an explanation for the issue and for the institution involved to take blame on that...just basically to exonerate..."*

During a call on the 25th February 2016, the First Complainant told the Bank Agent that the third party bank *"had agreed to take arrears off but they are leaving the moratorium on for 6 months."* He made it clear that in considering this proposal he wanted to establish, *"is that okay with you?"*

The Bank Agent asked, *"the moratorium was in connection with when you were unemployed?"* The First Complainant confirmed, *"unemployed, yeah, yeah and I was getting my insurance to pay for it, that's basically what it was."*

In relation to the moratorium, the Bank Agent advised that, *"to be fair, once that happens anyone that's the route you are supposed to take as well, ok. Once the other issue is sorted out [i.e., the arrears], I don't think it is too much in connection with the moratorium I think it was just in relation with the missed payments... So, once that is scrapped off the ICB I really don't think there should be any further issues. Once we tell them as well that you were unemployed which, during the course of 2008 to 2012, was pretty much happening every second person as well, so they can't really hold that against you in fairness. So we'll be upfront with them that there's going to be a moratorium on the ICB due to the fact you were unemployed."* The Complainant then advised that *"Well it's going to go in the next couple of months, because it's up, the 5 years is up."*

The First Complainant asked, *"Could you tell me whether that's okay with yourselves asap, the Financial Ombudsman wants to know whether I want to pursue this more."*

Bank Agent: *"Absolutely, What I can do is I'll just make sure its fine and if you want I can give you a call back..."*

First Complainant: *"If you can could, just to make sure that I can get a loan off you now because of this and I can get all the paperwork for you then after that."*

The Complainant added, *"I don't want to go pursue it anymore... but there is nothing on that moratorium, I read it inside out, that states that they will go to ICB as well."*

Bank Agent: *"That's fine. It's only kind of really missed payments and we'd ask a question why he was on a moratorium but we have the answer for them. ...I think it was only for about 5 months is that correct?"*

First Complainant: *"I had to get my insurance to pay."*

...

Bank Agent: *"I think the major stumbling block in it was the [third party bank] ICB. Did the Ombudsman send you any letter out, to confirm that or anything like that..?"*

First Complainant: *"No, he wants to find out from yourselves first, before he accepts that off them."*

Bank Agent: *"I don't really see a particular issue with it but what I'll do is, I'll just run it past them, just in case."*

First Complainant: *"That they confirm that I will get mortgage approval as long as that arrears is taken off."*

Bank Agent: *"Yeah perfect".*

First Complainant: *"Will you come back to me asap".*

...

Bank Agent: *"Hopefully before I head off today...I won't leave you hanging on the decision anyway."*

The next day, 26th February 2016, the Bank Agent rang the First Complainant and advised as follows: *So, just got it confirmed, once it's off the ICB it's definitely something we can re-evaluate for you. So in terms of what we need to do there, is you need to contact your Financial Ombudsman and get him to clear the ICB or get [third party bank] to clear the ICB and once we get confirmation that's been done from [third party bank] or from him, re-apply with us..."*

First Complainant: *"Is that okay now or is it not, I don't want to go through this messing again."*

First Complainant: *"No, no is fine, yeah that that was the only issue with it, that the underwriter informed me of. So once it's off the ICB you'll be fine. Your moratorium won't come into a major factor because, as you said, it was due to unemployment and you entered in the agreement that you are supposed to enter in."*

It is clear from the conversations which occurred that that Complainant was anxious to have confirmation given to him by the Bank Agent that the appeal application was in order and that it would be successful. He explained that he did not want to go have to go through the

/Cont'd...

entire application procedure again, if there was going to be an issue with the application, with particular regard to the moratorium.

I accept that the Complainant was made aware, during the course of various conversations, that the Bank's decision as to whether to approve their loan application would ultimately be a matter for the underwriters. The Bank Agent explained to the First Complainant, on 18th January 2016, that *"the only thing that they will do, the underwriter is take all the information that they have and then assess it on that."* Upon being pressed on the matter, the Agent advised that *"it depends on the underwriter."*

However, the Bank Agent clearly did incorrectly advise the Complainant that there should not be an issue regarding the moratorium which was reported on his ICB record. Indeed, he did so, having told the Complainant that he would check internally first, to confirm the position. He then phoned the Complainant the following day, by way of confirmation that he had checked specifically as to this query and could provide the Complainant with an accurate reply. It is a mystery how it therefore arose that, in replying to the Complainant as to this specific query, he gave the Complainant information that was entirely incorrect. The record of the moratorium was indeed a *"major factor"*. It therefore seems that either the Agent in question did not check internally, or alternatively when he did so, he was given inaccurate information from another internal source, which he then passed on to the Complainant. Alternatively, when he phoned the Complainant that day, he did not recall the very specific question which the Complainant sought to have answered, which he requested, per the telephone call above.

There is no evidence before me to suggest, however, that the First Complainant would have been successful in having the record of the moratorium removed, in any event. I have noted the First Complainant's explanation to the Bank Agent as to how this moratorium came to be agreed between the parties, namely, that the First Complainant was unemployed for a period of 5 months between December 2012 and April 2013. He was able to arrange to have interest-only repayments made on his loan with the third party bank pursuant to the Payment Protection Insurance which he had in place at that time. This necessitated a moratorium from full repayments.

I note the Complainant's explanation to the Bank Agent that he believed he could have the record of the moratorium removed, because there had not been anything in the correspondence which he received from the third party bank which stated that the moratorium would be reported to the ICB. Whether the Complainant was correct in that regard remains unclear, though it is of course reasonable to assume that if the record of the moratorium presented a problem with advancing his loan application to the Bank, and the Complainants were unable to have that record removed, they might have elected to postpone the application for the period of 6 months, until such time as the record, as they had been given to understand, would fall away. Or indeed, they might have sought facilities elsewhere.

As events transpired, because the Bank Agent in question advised the Complainant that the presence of the moratorium on the ICB report would not prejudice his application, he acted on this basis and this information then transpired to be incorrect.

/Cont'd...

It is clear from the audio recordings that the First Complainant wanted to avoid a situation where, having spent a significant amount of time and effort submitting documentation and having the ICB report amended to remove the arrears history, that he might nonetheless be declined on the basis of the moratorium appearing on the record. He advised the Bank that he could get a mortgage with another lender and I note that he has since advised this Office, by email dated 17th August 2017, that he “subsequently got a loan from [another bank] with no issues whatsoever”.

I note that, on 29th March 2016, after the Complainants received notification from the Bank that it had declined their mortgage application, the First Complainant submitted a formal complaint to the Bank. The Bank subsequently undertook to assess their application again.

I have had regard to the details set out in the “Retail Mortgage Application Appeal Form” dated 20th April 2016 and I note the following “Reason(s) for Appeal: Sales Advisor Remarks”:

- *The reason for the moratorium was due to the customer being out of work however they are both now in permanent employment earning a joint income of €60k. We don't require Ms income for this to work.*
- *Loan amount required €100k over a 12 years (based on Mr age 54) – not factoring Ms age as not taking salary into account*
- *Strong background/employment history within [B.....]*
- *Property value €550k which gives a Low LTV of 18%*
- *Stressed repayments €945 vs demonstrated repayment capacity of €2,000*
- *Savings on file for €116,440*
- *Equity from sale of unencumbered property will be c. €430,000*
- *Total funds available to applicants is €546,440.*

Details of the outcome of the full credit assessment which was carried out are outlined the Loan Credit Committee Meeting Minutes, from the 22nd April 2016. The notes state, as follows:

While the LTV is low LCC were concerned that providing a mortgage to [the Second Complainant] at the age of 64 (79 at maturity) is not suitable notwithstanding that the proposal qualifies on [the First Complainant's] income alone. In addition, the level of income is high and LCC questioned variable. Whether this would be sustainable at this level for the term of the (15-year) mortgage. The moratorium on the ICB & the missed credit card payment (the latter historic) are negative features however, these alone are not sufficient to decline the proposal. These coupled with the age and questions over the sustainability of variable income led the LCC to decline the proposal.

The Bank issued its Final Response Letter to the Complainants on the 03rd May 2016. The letter advised as follows:

It is our practice that all applications are initially subject to an ICB check before we proceed to carry out a full credit assessment and in this instance I can confirm that your

/Cont'd...

case was not assessed any further once it was determined that the ICB record that placed you outside the Banks credit criteria.

In light of the conflicting information that you received, the Bank agreed to carry out a full credit assessment of your application to determine whether this could be facilitated notwithstanding the ICB record.

Please be assured that your application was given a fair and thorough assessment in accordance with the Bank's process and procedures and on the basis of all available information. Every application is assessed on a case by case basis taking account of a number of factors including an individual's personal circumstances, an individual's household commitments, income, outgoings, previous credit history, personal loans, mortgages and credit card or other financial commitments.

Following the full assessment, your application was determined to be outside KBC Bank's credit policy on a number of aspects, including but not limited to, the adverse credit rating on your ICB."

I accept that the decision whether to approve an application for a loan is a matter which falls within the commercial discretion of the Bank. However, the Complainant and his wife could have been saved a significant degree of time and effort in relation to their application, had they been informed correctly, at an early stage, that the presence of the moratorium on the ICB record would place them outside the Bank's criteria for mortgage application consideration.

In the circumstances, I consider it appropriate to substantially uphold the complaint. I note that the Bank has offered the Complainants a Customer Service award, in the amount of €150.00 in recognition of the incorrect information provided to them. However, in light of the nature of the repeated misrepresentation of the Bank's position, as described above, I consider it more appropriate that the Respondent Provider make payment in the amount of €1,500.00, to an account of the Complainants' choosing.

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)(g)**.
- Pursuant to **Section 60(4)** of the **Financial Services and Pensions Ombudsman Act 2017**, I direct that the Respondent Provider make payment in the amount of €1,500.00 to an account of the Complainants' choosing within a period of 35 days of the Complainants notification of account details to the Provider.
- Pursuant to **Section 60(6)** of the **Financial Services and Pensions Ombudsman Act 2017**, I 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**, where the

/Cont'd...

amount is not paid within a period of 35 days of the Complainants' notification of account details to the Provider.

- Pursuant to **Section 60(8)** of the **Financial Services and Pensions Ombudsman Act 2017**, the Respondent Provider is now required, not later than 14 days after the period specified above for the implementation of the direction pursuant to Section 60(4), to notify this office in writing of the action taken or proposed to be taken in consequence of the said direction outlined above.

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
DIRECTOR OF INVESTIGATION, ADJUDICATION AND LEGAL SERVICES**

05 June 2018

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) in accordance with the Data Protection Acts 1988 and 2003.