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| <u>Decision Ref:</u> | 2018-0038 |
| <u>Sector:</u> | Banking |
| <u>Product / Service:</u> | Loans |
| <u>Conduct(s) complained of:</u> | Dissatisfaction with customer service Delayed or inadequate communication |
| <u>Outcome:</u> | Rejected |

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

This complaint concerns the Complainant's application for a business loan with the Provider.

The complaint is that the Provider failed to provide the Complainant with an acceptable level of customer service.

The Complainant's Case

The Complainant submits that in early 2016 he made an application to the Provider for a €50,000 business loan. The Complainant submits that from the start of this process he and his accountant had nothing but anguish at the way his application was handled. The Complainant submits that through the timely process, he received no correspondence from the Provider, his application was declined for various reasons and despite numerous attempts made by him and his accountant, he was kept in the dark with regard to the outcome of his appeal lodged on 24 June 2016.

The Complainant states that he is seeking *"Damages for severe emotional trauma, loss, damage, stress, inconvenience and expense as a result of the negligence and negligent misstatement of [the Provider] in the processing of a business loan application"*.

The Provider's Case

The Provider submits that having reviewed the loan application with its Business Lending Department, it acknowledges that the high level of customer service it strives to provide its

customers was not evident to the Complainant and his representative on this occasion. The Provider states that it *“wishes to sincerely apologise for the inconvenience and stress this may have caused”*.

The Provider submits that it did not follow its own procedures in order to keep the Complainant fully updated on the status of the loan application throughout the process. The Provider submits that the initial statements that the Complainant was requested to provide, as part of his application on 4 May 2016, were not correctly processed and as a result of this processing his loan application was delayed until 23 May 2016.

The Provider submits that it telephoned the Complainant on 25 and 26 May 2016 to advise him on the outcome of his loan application and provide him with details on his right to appeal the decision. The Provider states that *“Unfortunately, the letter issued by the Bank that confirmed the loan had been declined was sent to [the Complainant’s] proposed business address as opposed to his residential address and for this the Bank offers its sincere apology”*. The Provider submits that the Complainant appealed its decision on 21 June 2016 and the underwriting department reassessed the loan application. The Provider submits that it wrote to the Complainant at the business address he provided on the Appeals form to confirm that the original loan decision was being maintained.

The Provider submits that it has strict lending criteria in place to ensure responsible lending. It also submits that it applies a variety of techniques and principles in the assessment of each credit application and any one or a combination thereof can give rise to a request for credit being turned down.

The Provider states that it *“notes that [the Complainant] sent a letter to Group Customer Complaints dated 1 September 2016, unfortunately, I can confirm that that there is no record of receiving that letter. The further email issued by [the Complainant’s representative’s] office on 24 October 2016... was received, but as it is a general query address and unfortunately because your email contained an attachment, for security reasons, it did not reach the correct area”*.

The Provider states that it *“offers its sincere apologies for the level of customer service received by both [the Complainant and his representative] during this process and have taken the appropriate steps to ensure that the high levels of customer service the Bank offers its customers will be more evident going forward. Please be assured we have taken the appropriate remedial steps with the relevant service team and highlighted the matter with senior management in an effort to prevent a reoccurrence”*.

The Provider states, in its final response letter dated 27 February 2017, that it *“would like to offer [the Complainant] a gesture of goodwill payment of €1,000 in respect of the poor customer service he received. This offer has been made in order to bring this matter to a mutually satisfactory conclusion as a gesture of goodwill and in full and final settlement of his complaint”*.

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 27 February 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 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.

The Complainant's representatives made a submission dated 16 March 2018 stating "*Having considered the Preliminary Decision of the Financial Services and Pensions Ombudsman, we submit that an Error of Law has been made in the Preliminary Decision; further submissions will follow in due course*". Despite the Complainant's representatives being provided with an opportunity to make further submissions, no further submissions were forthcoming. The final determination of this office is set out below.

The issue to be determined is whether the Provider failed to provide the Complainant with an acceptable level of customer service with regard to his business loan application.

The Complainant's representatives submit that the Complainant completed a loan application for a start-up business loan on 14 April 2016 at a branch of the Provider. The Complainant's representatives submit that the Complainant engaged with the Provider's branch in relation to the proposed business loan application to no response. The Complainant's representatives submit that the Complainant received no correspondence from the Provider throughout the application process, and appealed the Provider's decision on 24 June 2016 once he discovered that the application had been declined.

The Provider submits that the Complainant applied for a business loan in the sum of €50,000 in its branch, which was referred to its Business Banking Department. The Provider submits that its representative in its Business Banking Department telephoned the Complainant on

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4 May 2016 to obtain additional information and to confirm some details of the application. The Provider submits that, as the Complainant was not an existing customer, its representative requested six months personal bank account statements and advised the Complainant that he could drop these into a local branch or alternatively he could forward them to her by email. The Provider submits that the Complainant confirmed that he would forward the statements by email, and its representative advised that she would send him an email outlining her details.

I note that the Provider's representative's email to the Complainant dated 4 May 2016 states:

"Thank you for taking my call today. As discussed can you please send me your most recent 6 months personal accounts statements. I look forward to hearing from you soon."

The Provider submits that its branch received the Complainant's statements on 5 May 2016 and forwarded these by fax to its Business Banking Department. The Provider submits that its branch sent the Complainant's statements by email to its representative in its Business Banking Department on 23 May 2016 as this department had not received the fax from the branch on 5 May 2016. The Provider submits that on 23 May 2016 the Complainant's application was submitted to its Underwriters for consideration.

I note from the telephone recordings submitted by the Provider that the Complainant contacted the Provider on 23 May 2016 seeking an update on his loan application. It is clear from the evidence before me that the Provider lapsed in its service to the Complainant with regard to transmitting the account statements to the relevant department on receipt of same by the branch on 5 May 2016, causing a delay in the assessment of the Complainant's loan application.

The Provider submits that on 25 May 2016 its representative in its Business Banking Department attempted to contact the Complainant regarding his business loan application but was unsuccessful. The Provider submits that on 26 May 2016 its representative in its Business Banking department spoke to the Complainant and confirmed its decision to decline the loan application. The Provider submits that during the telephone call its representative provided the Complainant with the rationale of its decision with details on how to appeal the decision if he wished to do so. The Provider submits that on that same day it issued a letter to the Complainant confirming the rationale as to why the application was declined.

The Provider has submitted a copy of its letter dated 26 May 2016 to the Complainant, which I note states the following:

"Thank you for your recent application for business credit. We looked at your application carefully and taking everything into account, we are unable to provide the facilities as proposed which will come as a disappointment to you. On this occasion we have decided not to offer you credit because:

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We do not see clear evidence from the plans for your business that you will have the ability in the future to repay the credit over its duration.

No own input to the business and no [Provider] track record.

We would like to advise that if you are dissatisfied with this decision you do have a right to appeal within 21 business days through our internal credit appeals process, details of which can be found in the Information Booklet on the Code of Conduct for Business Lending to Small & Medium Enterprises which is available in the business banking section of our website at... To initiate the appeal process, please complete and submit the Business Lending Appeal Form which is available to download from our website.

Should you remain dissatisfied following the internal appeals process, you may have the right to refer your case to the Credit Review Office for their consideration. Information about the role of the Credit Review Office and the eligibility criteria for review can be found on their website at...

If you wish to discuss this matter further or require any additional information please contact..."

The Provider states that *"The Complainant applied in-branch for a loan which was referred to our Direct-channels for processing. The Complainant was telephoned on 4 May to complete the application by telephone as such there is no physical application form"*. The Provider submits that the letter dated 26 May 2016 was forwarded to the address as confirmed by the Complainant during a telephone call on 23 May 2016 at 14:39 hours. The Provider submits that as the Complainant was not an account holder with the Provider and this was the only address held for him.

While I note the Complainant submits that he did not receive the Provider's letter dated 26 May 2016, I must accept, based on the evidence before me, that the address the Complainant gave to the Provider's representative during the telephone conversation on 23 May 2016 was the same address the Provider issued its letter dated 26 May 2016 declining the loan application and also the same address as provided by the Complainant's Accountant in his email to the Provider dated 27 April 2016, albeit, there was an error in the spelling of the address by the Provider. I am of the view that the mis-spelling of the address was not significant enough for the letter to have been undelivered, and I can find no evidence that this letter was returned to the Provider undelivered. Furthermore, I note that the Provider's representative advised the Complainant during a telephone conversation on 26 May 2016 that the loan application had been declined, she provided the rationale for the declination and advised the Complainant that he had the option to appeal the decision and if he was unsatisfied with that outcome he could bring his case to the Credit Review Office for its consideration. I also note that the Provider's representative stated that *"I will issue out the letter today showing the details and any queries just give me a shout"*.

The Provider has obligations pursuant to the Code of Conduct for Business Lending to Small and Medium Enterprises 2012 ("the CCSME 2012"). Provisions 2 – 5 and Provision 12 of the CCSME 2012 provide the following:

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“Applications for Credit

- 2. A regulated entity must consider each application for credit facilities on its own merits.*
- 3. A regulated entity must inform borrowers how long the process is considered likely to take. This information may be in statistical form, consistent with past experience, or be based on service targets set by the regulated entity.*
- 4. A regulated entity must maintain records of all applications for credit facilities.*
- 5. A regulated entity must have appropriate procedures in place to assess a loan application.”*

Provision 12 of the CCSME 2012 provides that:

“Declining/Withdrawing Credit

- 12. Where an application for credit is declined, the regulated entity must explain clearly to the borrower the reason(s) why the credit facility was declined.”*

The Provider submits that the Complainant’s business loan application was assessed by its underwriters and a decision was issued to the Complainant both verbally and by letter, as per its procedures. The Provider submits that during the telephone application the Complainant was asked to provide documentation in order to complete the application and loan assessment. The Provider states that *“Unfortunately, when the Complainant provided this information to the Bank, the documentation was misplaced which led to a delay in the loan assessment”*. The Provider submits that once a further copy of the documentation was received on 23 May 2016, the loan application was expedited and a decision was issued to the Complainant by telephone on 26 May 2016, and by letter on the same date. The Provider submits that it held the application on its system.

The Provider submits that its underwriters follow a robust assessment process in the assessment of loan applications. The Provider submits that it assessed the Complainant’s business loan application in line with its credit criteria and its decision was based on the information provided by the Complainant and his business plan.

The Provider has submitted screenshots of the Complainant’s business loan application assessment and underwriter screenshots. I consider that the screenshots demonstrate that the Provider did assess the Complainant’s business loan application.

The Complainant’s representatives submits that the last page of the Provider’s *“document underwriters screenshot. It reads: “THIS IS EXTREMELY TIGHT BUT I WOULD BE WILLING TO SUPPORT A LESSER AMOUNT OF 40K TO ALLOW FOR EQUIPMENT, VAN 6K AND REDUCED WORKING CAPITAL”*. The Complainant’s representatives submit that the Complainant was never made aware of this offer, and if he had been, he would have unequivocally accepted the offer. The Complainant states that *“This has taken over 12 months to discover this which makes me very frustrated. If I had been offered the amount, I would now be well established in my business. The stress that this has caused me has resulted in many visits to doctors with depression, loss of my sleep pattern and a personal breakdown with partner of 7 years. I*

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would like to add if the offer is still available for the loan, I would be willing to accept it as I still have many orders and contracts to fulfil”.

In response, the Provider states that it “can confirm that the note in question referred to by the Complainant’s representative was an internal note not meant for public view. The Business advisor dealing with the application for a lending facility of €50,000, referred it to the bank’s underwriting department for approval. Along with all the documentation, the agent had supported an option of providing lending in a lesser amount of €40,000, if the original amount was not approved. The application was considered in its entirety by the Bank’s underwriting department and the Bank can confirm that both options were declined”.

The Complainant’s representatives submit that the reduced proposal was not submitted to the Complainant. The Complainant’s representatives submit that there is no evidence to illustrate that the lesser amount of €40,000 was submitted to credit and/or the underwriter or that credit and/or the underwriter re-considered the Complainant’s application at the lesser amount of €40,000.

The Provider has submitted a copy statement from the Business Advisor who dealt with the Complainant outlining the Provider’s process in loan applications. I note that this states the following:

“I submitted the application on our lending system... As part of our process the lender must input a recommendation. In my recommendation I indicated my support for a lesser amount. The underwriter is under no obligation to approve the amount that I recommend. I advised customer of the reasons for decline and issued standard decline letter.

When I telephoned [the Complainant] with the Bank’s decision, I did let him know that he had the option to apply for a lesser amount through [a company that specialises in lending to small businesses].”

This Office will not interfere with a financial service provider’s commercial discretion in the form of a decision to accept or reject a consumer’s application for credit, other than to ensure that the Provider complies with relevant codes/regulations and does not treat the applicant unfairly or in a manner that is unreasonable, unjust, oppressive or improperly discriminatory. There is no evidence before me to suggest that the Provider processed the Complainant’s application unfairly or unreasonably. Furthermore, I can find no evidence that the Provider was discriminating against the Complainant or that its behaviour was oppressive in refusing to grant him a business loan.

I note that the Provider’s underwriter screenshots set out, among other things, that “T/1 50k/60 months declined”. While it is not clear from the evidence before me whether the Provider’s underwriter assessed the lesser sum of €40,000, I must accept that this was a recommendation only by the Provider’s Business Advisor, and no formal application had been made for the reduced sum.

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Whilst I understand the Complainant's frustration and disappointment with the Provider's decision, the Provider's own lending criteria fall within its commercial discretion. I must accept that the Provider was entitled to reach the decision that the Complainant's assessment did not meet its lending criteria. I must also accept that the Provider has explained the basis for its decision.

The Complainant submits that he appealed the Provider's decision on 24 June 2016. The Complainant submits that his Accountant was constantly seeking an update on the appeal, however he received no response for 50 days. The Complainant submits that as they received no communication from the Provider he telephoned the bank manager who was handling the application. The Complainant submits that the bank manager was on annual leave and the Provider's representative advised that he would get another representative to contact him, however this never happened. The Complainant submits that on 16 August 2016 he telephoned the bank manager's colleague, who was also going on annual leave that day, however she advised that she would get another of the Provider's representatives to contact him, and again he received no communication from the Provider.

The Provider submits that on 21 June 2016 its internal Credit Appeal Unit received a letter dated 17 June 2016 from the Complainant's Accountant together with a Business Lending Appeal Form signed by the Complainant. The Provider submits that it issued a letter to the Complainant on 27 June 2016 confirming its original decision remained. The Provider submits that this letter issued to the Complainant's business address provided by his representative in the completed Business Lending Appeal Form. The Provider submits that it does not have a record of its letter being returned undelivered.

I note that the Provider's letter dated 27 June 2016 was issued to the same address as set out under "Business Details" on the Complainant's "Business Lending Appeal Form". The Provider's letter dated 27 June 2016 states, among other things, the following:

"As you are aware, your recent application for credit facilities was declined and you appealed this decision. We have considered your appeal and reviewed the original decision and we advise that we remain unable to provide the credit facilities as sought following completion of our internal credit appeals procedure.

We would like to inform you that, should you remain dissatisfied with our final decision, you have the right to present your case, and our decision, to the Credit review Office for their consideration. The Credit Review Office has been established to offer independent advice and arbitration to borrowers who have had their request for credit turned down by a bank. Further information about the role of the Credit Review Office and the eligibility criteria for review can be found on their website at...

We enclose a copy of the Credit Review Process leaflet, in which you will find details of how to take your case to the Credit Review Office."

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The Provider submits that its representative received an email from the Complainant's Accountant on 7 July 2016 advising that they had not received a decision from the Credit Appeals Unit. I note that that the Complainant's Accountant's email dated 7 July 2016 states:

"No reply from [the Provider] on the appeal which was sent on the 24 June 2016.

Do you have any update."

The Provider submits that its representative referred the matter back to the Credit Appeals Unit and requested that the letter with the outcome of the appeal would be re-issued. The Provider submits that its representative also telephoned the Complainant's Accountant and informed him that the Complainant's appeal had been unsuccessful.

The Provider has submitted a statement from its representative which I note states, among other things, the following:

"I don't believe I spoke directly to [the Complainant] until he rang me when I was on Annual Leave in August 2016. The original proposal was referred by...

However to the best of my recollection I believe that I spoke to his Accountant... in relation to the decision of a Senior Underwriter to uphold the original underwriting decline decision on the proposed loan. I believe this was after [the Complainant's Accountant] emailed me on the 7th July 2016 to advise that they had received no reply from [the Provider] in relation to the appeal submitted on the 24.06.16. I received a reply from [Business Lending] later that day by email advising that the appeal had not been successful and that a letter had issued directly to [the Complainant] after the appeal decision of the 28th July 2016.

I asked [Business Lending] to re-issue the decline letter to [the Complainant]."

I note that the Complainant's representatives submit that they sent a letter on behalf of the Complainant to the Provider's Customer Service Department on 1 September 2016 and received no response. The Complainant's representatives submit that they reissued this letter on 15 September 2016 and tried multiple times to speak to a member of the Complaints Department but were unsuccessful.

The Complainant's representatives submit that on 29 September 2016 they were unable to find contact details for the Provider's Complaints Department, but eventually got through to the Business Banking Department. The Complainant's representatives state that a representative of the Provider *"from the Business Banking Department took our contact details and said he would investigate who is dealing with letter of complaint. He advised that he did not have a phone number for complaints department but had forwarded to his manager to advise. He confirmed to me that the address the letter was sent to was correct and said we should have had a response by now. He said he would ask his manager to escalate this"*.

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The Complainant's representatives submit that on 11 October 2016 they spoke with a representative of the Provider in its Customer Service Department who was unable to provide them with any information. The Complainant's representatives state that *"He said he could give me the number of the Complaints Department but could not transfer me through. I voiced concerns that I may not be able to reach the number as it was beginning with 1850 and I was calling from [outside the Republic of Ireland] but he said that was the only number he had. As expected, this number did not work. The phone number on the [Provider] website for callers outside ROI... does not connect to complaints department"*.

The Complainant's representatives subsequently emailed the Provider on 24 October 2016 regarding the lack of response from the Provider to its attempted communications.

The Provider has obligations pursuant to the Consumer Protection Code 2012 (the CPC 2012) in relation to the handling of complaints. Provision 10.9 of the CPC 2012 provides, among other things, the following:

"10.9 A regulated entity must have in place a written procedure for the proper handling of complaints. This procedure need not apply where the complaint has been resolved to the complainant's satisfaction within five business days, provided however that a record of this fact is maintained. At a minimum this procedure must provide that:

a) the regulated entity must acknowledge each complaint on paper or on another durable medium within five business days of the complaint being received;

b) the regulated entity must provide the complainant with the name of one or more individuals appointed by the regulated entity to be the complainant's point of contact in relation to the complaint until the complaint is resolved or cannot be progressed any further;

c) the regulated entity must provide the complainant with a regular update, on paper or on another durable medium, on the progress of the investigation of the complaint at intervals of not greater than 20 business days, starting from the date on which the complaint was made;

d) the regulated entity must attempt to investigate and resolve a complaint within 40 business days of having received the complaint; where the 40 business days have elapsed and the complaint is not resolved, the regulated entity must inform the complainant of the anticipated timeframe within which the regulated entity hopes to resolve the complaint and must inform the consumer that they can refer the matter to the relevant Ombudsman, and must provide the consumer with the contact details of such Ombudsman; and

e) within five business days of the completion of the investigation, the regulated entity must advise the consumer on paper or on another durable medium of:

i) the outcome of the investigation;

ii) where applicable, the terms of any offer or settlement being made;

iii) that the consumer can refer the matter to the relevant Ombudsman, and

iv) the contact details of such Ombudsman."

The Provider submits that it has carried out an extensive search and it does not have any record of receiving the letters of 1 September 2016 and 15 September 2016. The Provider

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states that the email of 24 October 2016 issued by the Complainant's representatives was received *"but as it is a general query address and unfortunately because your email contained an attachment, for security reasons, it did not reach the correct area"*. The Provider, in its submission dated 26 July 2017 to this Office, states that it *"notes and apologises that the email of 24 October [2016] was not acknowledged, this was as a result of security reasons"*.

The Provider states that *"On receipt of the letter of complaint from the Financial Services Ombudsman Bureau, the Bank undertook a full review of the circumstances surrounding this case. The Bank has acknowledged a fall down in customer service in its handling of the Complainant's Business loan application. The Bank sincerely apologises that it failed to ensure that the Bank statements it requested from the Complainant were correctly passed to the relevant agent to process, which caused a delay in the application being progressed. However, once these were received, the file was referred to Underwriting on 23 May for consideration and a decision was issued to the Complainant by telephone and by letter on 26 May 2016. It is important to note that this error did not have any impact on the Underwriters decision"*.

The Provider submits that it complied with Chapter 10 of the CPC 2012 in respect of investigating and trying to resolve the complaint, and that all timelines were adhered to. The Provider submits that it received a letter from this Office regarding the complaint on 27 January 2017, issued an acknowledgement letter to the Complainant on 2 February 2017 and issued its final response letter to the Complainant on 27 February 2017.

Having carefully considered all of the evidence before me, I am of the view that there has been a fall down in service on the Provider's part during the Complainant's application for a business loan. In particular, it is disappointing that the Provider delayed in forwarding a copy of the bank statements to the Business Banking Department when received on 5 May 2016, resulting in a delay in assessing the loan application.

I accept that the Provider advised the Complainant during a telephone conversation on 26 May 2016 that his loan application had been declined and provided the rationale for its declination. While the Complainant submits that he did not receive the Provider's letter dated 26 May 2016, I must accept that the Provider issued the letter to the address it held for the Complainant at that time as provided by the Complainant, albeit the address was mis-spelt by the Provider. The Provider has also submitted evidence that it wrote to the Complainant on 27 June 2016 in response to the Complainant's appeal.

While I note that there has been a fall down in service on the part of the Provider, I note that the Provider has apologised for this and offered the Complainant goodwill gesture of €1,000. The Provider has confirmed that this offer remains open to the Complainant. I am of the view that the sum of €1,000 is reasonable compensation for the Provider's lapses in service on the basis that this sum remains available to the Complainant. It is my Legally Binding Decision that this complaint is not upheld.

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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**

1 May 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.