



<u>Decision Ref:</u>	2018-0056
<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 Maladministration
<u>Outcome:</u>	Partially upheld

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

This complaint concerns the Complainant's mortgage loan application with the Provider.

The complaint is that the Provider failed to carry out a fair and thorough assessment of the Complainant's mortgage loan application, and failed to provide clear reasons for its refusal of the mortgage loan.

The Complainant's Case

The Complainant submits that the Provider refused to assess her application for a mortgage loan to be secured on her private dwellinghouse "*solely because of my marital status as a married person*". The Complainant submits that the Provider also failed to properly or adequately provide the reasons for the refusal of credit.

The Complainant submits that on 3 December 2015 she met with the Provider's mortgage advisor and explained that she would like to progress a sole application for a mortgage to finance the purchase of her private dwellinghouse. The Complainant submits that it was indicated at this initial meeting that, based on her individual income and overall financial circumstances, she satisfied the Provider's lending criteria for an indicative loan of €409,000 over a term of 27 years at a rate of 3.65%, which could be discounted by a further 0.2% if certain conditions were met. The Complainant states that "*It was also flagged by the mortgage advisor that a condition would likely be inserted in any letter of offer that issued, requiring my husband to obtain independent legal advice and complete necessary*

declarations on the basis that title would have to vest in my sole name given the sole nature of my proposed mortgage application”.

The Complainant submits that she submitted a formal application with all necessary supporting documentation, and on 11 January 2016 she was advised by the Provider’s representative, who she had met with on 3 December 2015, that the Underwriting Department advised that the application would have to be made on a joint basis, given her marital status and that she could not proceed otherwise.

The Complainant submits that she was advised that it was the Provider’s policy that applications for mortgages secured on the private dwellinghouse of a married person must be made by way of joint application.

The Complainant states that she is seeking the following:

- *“That [the Provider] carry out a fair and thorough assessment of my sole application, on the basis of my individual financial circumstances, outgoings and commitments – i.e. on a sole application basis – and in the event of its further refusal that the bank provide clear and substantive reasons for the refusal of credit.*
- *That [the Provider] be asked to clarify why, if it is the bank’s policy that a married person’s sole mortgage application to purchase a family home is assessed on a joint or household basis, that my husband’s financial details were never sought by the bank.*
- *That [the Provider] demonstrate how my sole application was given a fair and thorough assessment in accordance with the bank’s process and procedures, as is alleged, in circumstances where it did not seek or have in its possession any details regarding my husband’s financial circumstances.”*

The Provider’s Case

The Provider submits that the Complainant made a sole mortgage application for €380,000 to purchase a Private Dwelling Home, which was submitted to its Credit Department on 16 December 2016.

The Provider submits that when it declined the application, it initially incorrectly communicated to the Complainant that her application could not be assessed on the proposed sole applicant basis. The Provider states that this information was not factually correct as the reason for the decline of the Complainant’s proposed mortgage application. The Provider states, in its final response letter dated 12 April 2014, that *“This misunderstanding arose as [the Provider’s] policy is that a sole mortgage application, received for a married person for a family home, is assessed on a joint or household basis. The Bank has accepted that you were provided with contradictory information in this regard and can only apologise to you that this occurred. In light of this incorrect information we consider it appropriate to offer you a Customer Care Award of €250.00 which will issue under separate cover”.*

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 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 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.

The issue to be determined is whether the Provider failed to carry out a fair and thorough assessment of the Complainant's mortgage loan application, and failed to provide clear reasons for its refusal of the mortgage loan.

The Complainant submits that she met with a representative of the Provider on 3 December 2015 to enquire about mortgage approval. The Complainant submits that at that meeting she explained her marital status and highlighted that her application would be on a sole basis and related to a mortgage to fund the purchase of her family home. The Complainant states that *"I enquired as to how much I could borrow by reference to my sole income, overall financial commitments and position and taking into account [the Provider's] stress tests and lending criteria and policies"*.

The Complainant submits that at the meeting on 3 December 2015 she was informed that, having applied the Provider's requisite lending criteria, she had the capacity to borrow up to €409,000.00 over a term of 27 years at a rate of 3.65%, which could be discounted by a further 0.2% in the event that certain conditions were met. The Complainant, in an email to the Provider dated 17 January 2016, states that *"I clarified that the loan would fund the purchase of my principal dwellinghouse ("PDH") and you correctly noted that, in such*

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circumstances, the letter of offer would likely include a condition stipulating a requirement that my husband obtain independent legal advice and requiring that he complete necessary declarations. I was not informed, at this point in time, that it was [the Provider's] policy that applications for a mortgage to purchase a PDH must proceed by way of a joint application of both spouses in circumstances where an individual is married".

The Complainant submits that her financial details and supporting documentation were forwarded to the Provider's Underwriting Department as a sole application. The Complainant states that *"Those same details had been reviewed at our preliminary meeting on 3 December 2015 and were found to satisfy [the Provider's] stress tests and lending criteria and support a sole application in my name up to a maximum sum of €409,000.00".*

The Complainant submits that she was informed by the Provider's representative on 11 January 2016 that its Underwriting Department could not progress her sole application, and that the application would have to proceed on a joint basis as it related to a mortgage to be secured on a family home. The Complainant submits that an email was sent by the Provider's Underwriting Department to the branch advising that a joint application would be required in accordance with the Provider's policy. The Complainant states that *"This is despite the fact that no such policy was explained or articulated to me at any point previously nor is this policy reflected in any of the literature or documentation provided to me in connection with my mortgage application".*

The Complainant states that the position of the Provider's Underwriting Department remained unchanged *"despite the fact that [the Provider's] legal department confirmed, as was acknowledged and advised to me by the bank, that there was no legal impediment to the sole nature of my application and that, as discussed at my initial meeting, title could vest in my sole name without impairing the bank's security, provided my husband was independently advised and consented to the mortgage for the purposes of the Family Home Protection Act, 1976".*

The Complainant states that the Provider's policy, as outlined in its final response letter, *"is discriminatory given that the bank's practice means that a married person cannot be assessed for mortgage approval, in connection with the purchase of a pdh, on a sole basis by reference to their individual financial circumstances (notwithstanding the clear absence of any legal impediment to such a sole application)".*

The Provider submits that the Complainant met with its representative in its branch on 3 December 2015 to discuss her mortgage requirements. The Provider submits that at this meeting an indicative amount of €380,000.00 was outlined, and in addition, the Complainant sought clarity as to whether it would consider an application in her sole name for the purchase of a private dwellinghouse, notwithstanding the fact that she is married. The Provider submits that it was correctly outlined to the Complainant at that time that if the mortgage application was approved by its Credit Team, specific conditions relating to consent under the Family Home Protection Act and waivers of interest would need to be included in the offer.

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The Provider submits that the Complainant subsequently submitted a mortgage application form and the necessary supporting financial documentation. The Provider submits that no commitment was made to the Complainant to approve the application and the Complainant acknowledged that the application was subject to a full assessment of status and financial standing. I note that the loan application set out the following on page 11:

"GENERAL INFORMATION

Consumer Credit Act 1995

In accordance with the provision of the Consumer Credit Act, 1995 the following are for your attention:

All loans are subject to satisfactory appraisal of status and financial standing and require security over the property and suitable savings/protection policies."

The loan application also set out the following on page 9:

"I/We hereby declare and acknowledge:

(a) This form must not be construed as an offer on behalf of [the Provider]"

The Provider submits that the application and supporting documentation was initially assessed by its agent who then referred the case to its Credit Team. The Provider has submitted its representative's "File Note – Face to Face Meeting with [the Complainant]" dated 15 August 2017, which states the following:

"Please note that as the initial meeting with [the Complainant] took place in December 2015 my recollection of the meeting is limited due to the time which has lapsed since.

What I do recall is that I met [the Complainant] on 16th December 2015 in [a branch of the Provider]. The purpose of this meeting was to discuss [the Complainant's] mortgage application for a Private Dwelling Home (PDH) in her sole name.

Based on all the information received in the meeting it was clear that based on income, [the Complainant] was eligible for the amount requested. I collated the supporting documentation as detailed on the mortgage application checklist... and advised [the Complainant] that I would send her application to our credit team for review. She was a high income earner and although her husband was not named on the application as usually required, I confirmed I would send on the application to our credit team and allow them to make the decision."

The Provider has also submitted a copy of its representative's internal notes dated 16 December 2015, which I note state, among other things, the following:

"Pros:

Good account operation

High income earner.

Deposit held through savings.

MILO = €5253 – stressed mortgage €2242 – loan repayment €2780 for family of 2.

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Cons:

Recommendation: Approval Recommended on amount sought – Ms is a [named occupation] and is earning a high income. She is married and has no dependants. Her husband is not currently working and she did not wish to add him to the application. She has a large balance of funds which has built up through savings.”

The Provider states that *“Following referral to our Credit Team, it was concluded that we were unable to proceed with the sole application as we did not have visibility of the full household financial standing. This was communicated to the Complainant on 11th January 2016, albeit inaccurately, in that the Complainant was informed that the application was declined in her sole name because of her marital status. The Complainant’s marital status was not the reason the application was declined. To clarify, our Credit Team required an understanding of the household financial standing and this was not provided for assessment”*.

The Provider also states that *“We understand that the Complainant was informed that it was [the Provider’s] policy that a mortgage application received from a married person for their family home could not be assessed on a sole basis. We do acknowledge that this communication was incorrect and a customer care award of €250.00 was issued in this regard”*.

The Provider has submitted a recording of the telephone conversation between the Complainant and its representative on 11 January 2016. During that telephone call, the following conversation took place:

Provider: *“They finally got back to me there today and they won’t proceed with the application as a sole application. They have said they sent it on to senior management and while from a legal perspective they have no issue with proceeding, the reason... what they’ve told me is that the overall household expenditure debt and risk cannot be fully assessed without applicant’s husband submission of details.”*

Complainant: *“That’s the overall household but on the basis of sole application and your stress testing as initially... discussed I didn’t realise that... that was going to be an issue.”*

Provider: *“Yeah unfortunately it is... It’s something I thought we may have been able to do as well but they are being quite firm on this now.”*

Complainant *“Ok, well I’m not going to be able to progress it so.”*

...

Complainant: *“Will you send me an email to that effect because I’ll just have to consider it...”*

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I note that the Provider's internal email dated 11 January 2016 states the following:

"I am sorry for the delayed response on this case. The senior management team reviewed your request for the mortgage in Ms sole name and they also referred the issue to Legal again.

While from a legal prospective they would have no issue proceeding, it has been decided that from a credit risk point of view it is deemed to[o] high a risk to proceed. The reason for this that the overall household expenditure, debt and risk cannot be fully assessed without the applicant's partners submission of details."

The Provider submits that the decision to decline the application was made on a credit risk basis, and not based on the proposed structure of the facility. The Provider submits that each application is assessed on an individual basis using a wide range of qualifying criteria. The Provider states that *"Following our investigation into this matter, we are satisfied that the application was given appropriate consideration and was treated both fairly and accurately"*.

The Complainant submits that no proper assessment was undertaken by the Provider of the application she submitted. The Complainant states that *"not a single query of a credit nature was raised by your underwriting department regarding my application or supporting documentation. No query or request for clarification was raised with me regarding my income or overall financial situation as one would anticipate in the event of a full and thorough credit assessment. The single and only query raised related to the sole nature of my application whereby I was asked why I was not applying for a mortgage jointly with my husband – no other issue arose during the course of my engagement with [the Provider]"*. The Complainant also submits that no information was sought or requested by the Provider regarding her husband's income or financial details, and therefore a joint assessment on a household basis could not have been undertaken by it.

The Provider submits that it carries out its own independent credit assessment of a proposed risk and that this does not necessarily mean that it makes direct contact with an applicant to perform same. The Provider submits that it collates sufficient data as part of its application process to be in a position to determine an applicant's income, outgoings and net available income to support a mortgage application. The Provider submits that as part of the process, the matter of a joint application arose as it was assessing what additional income may be available for costs or outgoings that would be related to the Complainant's overall household situation.

The Provider submits that the Complainant's mortgage loan application was assessed as a sole application and was subsequently referred to Senior Management for further review. The Provider submits that on 11 January 2016, Senior Management within its Credit Department upheld the original decision and the application was declined based on credit risk. The Provider submits that the information available to its Credit Team to review and assess the Complainant's mortgage application in addition to her completed application form included:

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- [Third Party Bank] Annual mortgage Statement (2014)
- [Third Party Financial Service Provider] Investment Confirmation Document
- [Third Party Bank] Personal Loan statement (May 2014 to May 2015)
- Credit Union details
- [Third Party Bank] Current Account Statements (May 2015 to November 2015)
- [Third Party Bank] Credit Card Statement (November 2014 – October 2015)
- Salary payslips
- Employee Enquiry Form
- P60

The Provider states that the Complainant's sole application *"was given a fair and thorough assessment in accordance with the Banks process and procedures on the basis of the available information. Every case is assessed on a case by case basis taking account of a number of factors including an individuals' personal circumstances, an individuals' household commitments, income, outgoings, previous credit history, personal loans, mortgages and credit card or other financial commitments"*.

The Provider states that *"From a credit risk perspective it is standard practice to approve mortgage facilities in joint names for PDH (family home) debt even when sought in sole name where the parties are either married or cohabitating. This is to protect both the Bank and the borrowers given that beneficial interest may arise that could impact the security that we hold and also to determine if there are any factors that could impact upon ability to repay"*. The Provider goes on to state that *"In circumstance where there is a request to waive these requirements and to approve the loan in a sole name, consideration may be given to proceeding on the basis of full disclosure as to the rationale for the request and an assessment of the financial position of the other party"*. The Provider also states that *"If following full disclosure, the Bank is satisfied to approve the facility in a sole name then the appropriate Family Home Protection consents and waivers will be requested"*.

The Complainant states that the Provider *"has stated in its final response letter dated 12 April 2016 that it was incorrectly communicated to you that your application could not be assessed on the proposed sole applicant basis and that my sole application was given a fair and thorough assessment. Yet, the bank also states in the same letter that [the Provider's] policy is that a sole mortgage application, received from a married person for a family home, is assessed on a joint or household basis. The position adopted by the bank is contradictory – how can an application be assessed on a sole basis if the policy of the bank mandates assessment on a joint basis"*. The Complainant also states that *"These conflicting statements clearly illustrate the contradictory position of the bank – in the one instance the bank has advised the FSO that it was a miscommunication of its policy to state that a sole assessment of a mortgage application from a married person cannot proceed, yet this is exactly the policy which is adopted by the bank and which was employed to reject my sole application"*.

The Complainant submits that the Provider draws an artificial distinction, in circumstances where a married or cohabiting individuals seeking finance to purchase a private dwellinghouse between:

- i. a policy that mandates joint assessment of a sole application; and
- ii. a policy that mandates joint applications in all such instances.

The Complainant states that *“However, a policy that requires joint assessment in practice and effect is equivalent to requiring joint applications. To say that a sole application cannot be assessed, by reference only to the sole applicant’s financial position and repayment capacity, without in all instances seeking ancillary information with regard to his/her partner, in effect means that a sole application can never proceed on the basis of its own merits. As outlined by [the Provider], a sole application will never be progressed by the bank where the applicant is married or cohabiting without requiring joint information of the applicant and his/her partner –even in circumstances where the partner’s income is not being relied upon in support of the application for credit. Therefore, a sole application is not assessed or treated as a sole application in circumstances where the applicant is married or cohabiting”*.

The Complainant submits that in response to her request to provide clear reasons for the refusal of credit, the Provider *“has simply stated that the decision was made on a credit risk basis yet fail to outline the actual reason(s) for the refusal. Clearly any assessment (if undertaken) of whether to advance credit must involve an assessment of credit risk – this is self-evident. However, clear reasons for the refusal of credit in this particular circumstance have not been provided by the bank”*.

Provision 4.24 of the Consumer Protection Code 2012 (the CPC 2012) provides:

*4.24 Where a **personal consumer’s** formal application for credit is turned down by the **regulated entity**, it must clearly outline to the **personal consumer** the reasons why the credit was not approved. The **regulated entity** must offer to provide the reasons, on paper or on another **durable medium**, to the **personal consumer**. If requested by the **personal consumer**, the **regulated entity** must provide the reasons, on paper or on another **durable medium**, to the **personal consumer**.*

The Provider submits that its decision to decline the application was made as the application, once assessed, was found to be outside its acceptable criteria hence the decline on a credit risk basis. The Provider states that *“To clarify, any concern that the Bank may have over repayment capacity once income and potential outgoings have been assessed would be classified as a credit risk. The requirement of Section 4.24 of CPC 2012 is that the Bank must clearly outline the reasons why the credit was not approved. We consider that our letter of 4th February 2016 clearly outlined that the decision to decline the facility was credit risk based”*.

I note that the Provider’s letter to the Complainant dated 4 February 2016 states, among other things, the following:

“You subsequently submitted a mortgage application form and the necessary supporting financial documentation, which were progressed to our Credit Team to enable a full assessment to be carried out. Following this assessment, it was

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identified that we were unable to proceed with the application and this was communicated to you by our colleague on 11th January 2016.

We regret if this verbal communication did not accurately reflect the reason for our credit decision.

The decision not to approve your application was made on a credit risk basis, and not based on the proposed structure of the facility”.

Based on the evidence before me, I accept that no commitment was provided to the Complainant by the Provider at the time of application for the mortgage loan that it would be successful. 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.

I also accept the Provider's position that *“it is standard practice to approve mortgage facilities in joint names for PDH (family home) debt even when sought in sole name where the parties are either married or cohabitating”* and *“In circumstance where there is a request to waive these requirements and to approve the loan in a sole name, consideration may be given to proceeding on the basis of full disclosure as to the rationale for the request and an assessment of the financial position of the other party”*. That said, it is disappointing that the Provider's representative did not highlight this to the Complainant at the outset, when she met with her regarding the mortgage loan approval.

I note that the Provider informed the Complainant of its decision to decline the mortgage loan application in its letter dated 4 February 2016. The Provider's own lending criteria fall within its commercial discretion. While I must accept that the Provider was entitled to reach the decision that the Complainant's assessment did not meet its lending criteria, I note that the Provider did not fully assess the overall household expenditure, debt and risk as it did not have the Complainant's spouse's financial details. If the Complainant had been provided with the correct information regarding the Provider's policy at the outset, she would have had the opportunity either not to proceed with the application or to submit her spouse's financial details and the Provider could have fully assessed the overall household expenditure, debt and risk. I am of the view that the Provider, once it discovered that there had been an error in its communication to the Complainant regarding the declination for the mortgage loan application, should have provided the Complainant with the opportunity to submit her spouse's details in order that it could fully assess the overall household expenditure, debt and risk.

I note that the Provider apologised to the Complainant for the incorrect information initially provided to her regarding the declination of her application and issued her a customer care award of €250.00 in this regard. I am of the view that the sum of €250.00 is insufficient compensation for the Provider's lapses in service. I direct the Provider to make a compensatory payment of €500.00 to an account of the Complainant's choosing within a

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period of 35 days. For the avoidance of doubt, the compensatory sum of €500.00 is in addition to the €250.00 already issued to the Complainant by the Provider.

Consequently, this complaint is partially upheld.

Conclusion

- My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is partially 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 a compensatory payment of €500.00 to an account of the Complainant's choosing within a period of 35 days.
- 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 amount is not paid by 10 July 2018.
- 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 10 July 2018 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.

**GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

5 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.