



<u>Decision Ref:</u>	2019-0012
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Credit Cards
<u>Conduct(s) complained of:</u>	Refusal to grant consumer credit Delayed or inadequate communication
<u>Outcome:</u>	Partially upheld

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

Background

This complaint relates to the Provider's declination of the Complainant's application for a credit card facility.

The Complainant applied for a credit card facility using the Provider's online application platform on 02 November 2016. As part of the underwriting process, the Provider queried the Complainant's monthly repayments on an existing mortgage loan with a third party lender. This mortgage loan was confirmed to be on an 'interest only' repayment schedule. Based on this, the Provider deemed the Complainant's credit card facility to be outside of its credit criteria and declined the application.

The complaint is that the Provider wrongfully declined the Complainant's credit card facility and failed to give the Complainant the reasons why the credit was not approved. In addition, the Provider failed to return his supporting documentation in relation to assessing the application submitted by the Complainant for a credit card facility.

The Complainant's Case

The Complainant is unhappy that the Provider refused to grant his application for a credit card facility. On 02 November 2016, the Complainant applied for a credit card facility. He submits that, at this time, he had substantial savings to the amount of approximately

€50,000, that his salary was over €70,000 per annum and that he had a disposable income of €3,000 per month. In addition, he submits, he had never previously *“been refused any type of credit, bank facility or financial instrument”*. The reason why he was refused the facility, he contends, is because he had asked his mortgage loan provider *“to convert [his] mortgage to interest only in 2008, which [it] did”*; the Complainant’s mortgage loan provider is not the respondent to this complaint.

The Complainant contends that the Provider also failed to notify him of the declinature of his application and failed to return his supporting documentation. The Complainant asserts that he does *“not accept that [the Provider] can retain [his] payslips, photo id and other personal documents for six years following a failed credit card application”*.

The Complainant submits that the Provider *“did not like the fact that [he] had asked the [mortgage loan Provider] to convert to an interest only mortgage.”* He contends that this request *“should have improved [his] credit worthiness not diminished it.”*

Of the conduct complained of, the Complainant asserts that it is *“outrageous that [the Provider] can treat applications with scant regard for the actual profile.”* In resolution of his complaint, the Complaint would like *“€500 for [his] loss of financial standing”*.

The Provider’s Case

The Provider, in its Final Response Letter dated 08 December 2016, asserts that the reason why it declined the Complainant’s application for a credit card facility is because *“the application did not meet [the Provider’s] lending criteria”*.

The Provider elaborated further in the Final Response Letter to explain that *“during the application process, [it was] made aware that [the Complainant’s] mortgage is currently on a restructure arrangement. When [it assesses] customers for credit facilities, [it assesses] on the basis that their existing liabilities are on a capital and interest repayment schedule and on the basis that they are in a position to service all their existing liabilities”*.

In response to the Complainant’s assertion that the Provider also failed to notify him of the declinature of his application and failed to return his supporting documentation, the Provider states that it did not receive any original documentation and that it is its policy *“to retain copies of application forms and any supporting documentation received for 6 years post receipt”*.

The Provider confirms that it *“did consider and review [the Complainant’s] application following [his] complaint but regrettably the initial decision remains unchanged”*. It has added that its decision to decline *“remains a matter of commercial discretion for the Bank”*.

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

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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 06 December 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.

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

Firstly, as a general note, it should be explained that where requests in respect of credit card facilities are in dispute, the Financial Services and Pensions Ombudsman is only in a position to investigate a complaint as to whether the Provider, in assessing a Complainant's application, correctly adhered to any obligations pursuant to the Central Bank's Consumer Protection Code and/or any other regulatory or legislative provisions relevant to such applications.

This Office will, therefore, not interfere with the commercial discretion of a financial service provider, unless the conduct complained of is unreasonable, unjust, oppressive or improperly discriminatory in its application to a Complainant, within the meaning of **Section 60(2)(b)** of the **Financial Services and Pensions Ombudsman Act 2017**.

Secondly, in relation to the Complainant's application for a credit card facility made in November 2016, and specifically to the Provider's failure to notify him of the declinature of his application, I accept that the Provider ultimately correctly explained what had occurred and its reasoning behind the declinature of the application. Provision 4.24 of the Consumer Protection Code 2012 (as amended) states that:

*"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*

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the personal consumer, the regulated entity must provide the reasons, on paper or on another durable medium, to the personal consumer.”

The Provider contacted the Complainant by telephone on 02 December 2016 to inform him that his credit card facility application had been declined. However, having listened to the audio evidence supplied by the Provider, I can confirm that the Provider’s representative stated only that she was *“afraid it’s been declined”* and provided no further reasons for the said declination.

In a submission to this Office dated 11 December 2018 after the Preliminary Decision issued, the Provider stated that the Complainant did not afford the agent time to expand upon the decision to decline and that the call ended abruptly. Having listened to the calls again, I note that the first call lasted less than 2 minutes and did in fact, finish with the agent saying *“OK Pxxx, alright, thank you, bye bye”* i.e. the call finished in a way which was within the control of the Provider.

I am inclined to the view however, that the agent terminated the very brief call in that way (without explaining the reasons why the application had been declined) perhaps in shock or surprise at the Complainant’s comments to her that he was *“delighted”* with that outcome because he had *“a triple A credit rating”* and that he *“really didn’t want it”* and had been required to deal with *“what he would call juvenile questions and points”*, so that *“it is kind of great that [the Provider] made that call”* although it was *“ridiculous that they’ve made it”* on the credit rating he had, the age he was, and the way in which he intended to use the card. When the agent responded *“okay”*, the Complainant continued by advising that *“I take it it was teenage scribbles up there in your Underwriting Department who have egos the size of mountains, but you know, C’est la vie”*. At that point, when the agent then replied *“okay Pxxx”*, the Complainant said *“see ya”* and it was then that she replied *“okay, Pxxx, alright, thank you bye bye”*, by way of acknowledgment that the Complainant had effectively ended the call.

Provision 4.24 of the Consumer Protection Code 2012 (as amended) required the Provider to *“clearly outline to the personal consumer the reasons why the credit was not approved”*. In this instance, owing to the interaction between the parties, as outlined above, no discussion ensued regarding the reasons. A further call was made by the Complainant to the Provider later the same day requesting more information on why his application had been declined. The Provider’s representative stated at that stage that it had been *“declined by underwriting”* and further explained that it was due to *“affordability”* and that it was *“outside credit criteria”*. The Complainant indicated that *“it would be nice to have a legitimate reason rather than an opinion”*.

When the Complainant queried whether he would be receiving written confirmation of exactly why his application was declined he was told by the Provider’s representative that he would refer the Complainant’s query on to his colleague who originally dealt with the application, who would follow up with the underwriting department. I note in that regard that notwithstanding provision 4.24 of the Consumer Protection Code 2012 (as amended), the reasons why his application were declined only came to be disclosed to the Complainant

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as a result of the complaint submitted by him and not as a normal course of action in the declination of the credit application.

The durable medium informing the Complainant why the credit was not approved, came in the form of the Final Response Letter dated 08 December 2016, 6 days after the declination, confirming that *“during the application process, [the Provider was] made aware that [the Complainant’s] mortgage is currently on a restructure arrangement. When [it assesses] customers for credit facilities, [it assesses] on the basis that their existing liabilities are on a capital and interest repayment schedule and on the basis that they are in a position to service all their existing liabilities”*. As the Complainant did not satisfy the Provider’s criteria for credit at that time, the Complainant’s application was declined. I am satisfied that this decision as to whether or not to approve the request for the credit facility, was a matter falling within the commercial discretion of the Provider and this aspect of the complaint cannot be upheld. The secondary issue however is the obligation of the Provider, to give the Complainant the reason or reasons why that decision had been made.

For the purposes of this secondary element of the complaint, the guidance notes of the Consumer Protection Code 2012 defines a durable medium as *“any instrument that enables a recipient to store information addressed personally to the recipient in a way that renders it accessible for future reference for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored.”*

The Provider, in this instance, did not however supply the Complainant with reasons why his application was declined on any form of durable medium until the Final Response Letter issued 6 days later after the Complainant had complained. At that point, it was made clear that the application had been declined because the Complainant’s mortgage was *“on a restructure arrangement”*. Given the manner in which the original telephone call unfolded, it is unclear whether the Complainant would have received details of the reasons why the credit application was declined, if the telephone call had continued for longer. As events transpired however, the Provider failed to inform the Complainant during the first call of 02 December 2016, why his credit application had not been approved. In a submission to this Office by the Complainant dated 14 December 2018 after the Preliminary Decision issued, the Complainant asserts that he *“had to call [the Provider] several times to receive an additional explanation to their generic ‘outside our credit policy’ refusal”*. To this assertion, the Provider states in a submission dated 17 December 2018, that it cannot agree with the Complainant on this issue.

The Complainant also contends that the Provider failed to return his supporting documentation. The Complainant asserts that he does *“not accept that [the Provider] can retain [his] payslips, photo id and other personal documents for six years following a failed credit card application”*. Provision 11.6 of the Consumer Protection Code 2012 (as amended) states that:

*“A **regulated entity** must retain details of individual transactions for six years after the date on which the particular transaction is discontinued or completed. A **regulated entity** must retain all other **records** for six years from the date on which*

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the regulated entity ceased to provide any product or service to the consumer concerned.”

This aspect of the complaint is not upheld as the Provider has demonstrated its adherence to its obligations pursuant to this provision of the Consumer Protection Code 2012 (as amended).

To conclude, I accept that the Provider originally failed to provide reasons why the Complainant’s credit application was not approved, on a durable medium as required by the Consumer Protection Code 2012 (as amended) until he received a Final Response Letter in response to his complaint. For this reason, I consider it appropriate to partially uphold this complaint and to mark that decision, I direct the Provider to make a compensatory payment of €100 (one hundred Euro) to the Complainant to an account of the Complainant’s choosing within 35 days of the Complainant’s nomination of account details to the Provider.

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)** of the **Financial Services and Pensions Ombudsman Act 2017**.
- Pursuant to **Section 60(4) and Section 60 (6)** of the **Financial Services and Pensions Ombudsman Act 2017**, I direct the Respondent Provider to make a compensatory payment to the Complainant in the sum of €100, 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
DIRECTOR OF INVESTIGATION, ADJUDICATION AND LEGAL SERVICES

18 January 2019

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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.