



Decision Ref: 2019-0129

Sector: Banking

Product / Service: Personal Loan

Conduct(s) complained of: Mis-selling (banking)

Outcome: Rejected

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

Background

This complaint relates to a loan account and alleged and poor customer service.

The Complainant's Case

The Complainant states that he took out a loan of €10,000 from the Bank on 11 July 2017. He explains that he applied for this loan online and he received the monies in his account within hours of his application. The Complainant states that a couple of days later he received his loan pack which consisted of the terms and conditions of the loan. The Complainant explains that on one page he was required to sign and return to the Bank an authorisation allowing the Bank to take repayment out of his wages. He states that when he read the page, he noticed that he had also given the Bank a power of attorney. The Complainant states that he asked the Bank what it needed a power of attorney for but that the Bank did not give him any explanation. The Complainant states that the only advice he was given was that he should contact a solicitor himself.

The Complainant states that he did receive a letter from the Bank and it stated that they had the right to assign his loan to third party and that he was giving them permission to do so. The Complainant states that if the Bank is profiting from his signature then he deserves some

of the profit as well and until he receives an explanation from the Bank he is suspending all repayments. The Complainant believes that the Bank has sold on his loan to a third party.

the Complainant makes the point that the Bank have not loaned him money and that the Banks do not lend money, they buy securities and sell them on or assign them.

The Bank's Case

The Bank explains that the Complainant applied for his loan online and that in order to apply for the loan or to complete the online application, the Complainant would have had to have ticked a box confirming that he read and accepted all information and terms and conditions of, among other things, the credit agreement.

The Bank states that it has not sold on the Complainant's loan. In addition, the Bank explains that the balance on the loan account as of 17 October 2018 was €10,894.62. The Bank states that in recognition of the Complainant's confusion and misunderstanding in relation to the power of attorney referred to in clause 12.12, it is willing to offer as a goodwill gesture to clear the interest charged or accrued and to clear the Complainant's ICB records in relation to the loan account. The Bank states that it proposes to clear the amount of €1,184.06 in relation to the interest charged that the balance on the loan account to be repaid by the Complainant would be €9,710.56 which the Bank will discuss with the Complainant vis-à-vis repayment arrangements. Finally, the Bank have offered a goodwill gesture to the Complainant in the amount of €500 in light of his confusion and misunderstanding of the terminology contained in clause 12.12 of the terms and conditions of the credit agreement.

The Complainant has refused the Bank's offer and states that he wants the Bank to write off the loan and the interest and that he will then accept the offer of €500 in recognition for the "hassle and grief" he asserts the Bank has caused them.

The Complaint for Adjudication

The complaint is that the Bank has wrongfully and unreasonably refused to provide the Complainant with answers to his questions as to why a power of attorney was needed. The Complainant states that he wants to know why the Bank needs has power of attorney and what they are doing with the signature.

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 29th April 2019, 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 issuing of my Preliminary Decision, the Complainant made a further submission by email dated 9th May, 2019, a copy of which was transmitted to the Provider for its consideration. The Provider under cover of its letter dated 17th May, 2019, advised this Office that it did not wish to make any further submission.

Following the consideration of the Complainant's additional submission, together with all of the evidence and submissions furnished, I set out below my final determination.

I have been furnished with a copy of the relevant documentation. The documentation shows, as the Complainant has submitted, he took out a loan from the Bank on 11 July 2017 of €10,000. As the Complainant states, he applied for this loan online and was able to draw down on the monies within a matter of hours. The Complainant states that approximately two days later he received his loan pack which included the terms and conditions of the loan agreement. The Complainant states that he then noticed wording on one of the pages that he states meant that he had provided the Bank with power of attorney.

The Bank explains that in order to draw down the loan, the Complainant was required to accept the Bank's terms and conditions provided. In that regard, I have been provided with and I have reviewed, the terms and conditions relevant to the credit agreement entered into between the parties.

The relevant clause is clause 12.12 and it provides as follows:

We reserve the right to assign, charge, transfer, so participate or otherwise dispose of all or part of this loan and the security to any member of the [Banks] group or to

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any third party. We can do this at any time and without notice to you or your prior consent. If we do, we can give any proposed assignee, chargee, transferee or sub-participant (and their professional advisers), any information that we deem necessary relating to you, your loan and/or the security. You agree to execute, at our cost, any documentation which we request you to execute in connection with any such assignment, transfer, sub-participation or securitisation and you appoint us to be your attorney to sign any such documentation.

The Bank explains that this particular clause relates to the Bank's right to assign the Complainant's loan to another entity within the [Bank] group or to a third party without notice to or prior consent of the Complainant. The Bank further explains that the appointment of the Bank by way of power of attorney in the context of clause 12.12 above, is solely in the context of the Bank's right to assign etc. all or part of the Complainant's loan and/or security.

The essence of the Complainant's complaint, as per his complaint form submitted to this office, was that he wants to know why the Bank needed his power of attorney, that he suspected the Bank has sold on his loan and that he wants to know if he is due any compensation.

I am satisfied that the online loan application process provided the Complainant an opportunity to review, among other things, the credit agreement. Within that credit agreement is clause 12.12, the clause that is the subject matter of this dispute/complaint. The online loan application expressly provides that applicants do not have to immediately accept the loan offer and that they may exit the process and set up later. If this happens, it is stated that the application will be available for 30 days. There is an icon available to select to "set up later". Alternatively, applicants can tick a box confirming "I have read and accept all information and terms and conditions provided in the documentation above". The Complainant decided to tick the box and he confirmed that he received the monies within a matter of hours. It was open to the Complainant at all times to consider the credit agreement before confirming his acceptance of the terms and conditions contained therein. If he had done that, he would have seen clause 12.12 and he could have raised queries or clarifications as to its precise meaning and scope or decided not to accept or drawdown the loan.

Furthermore, the Complainant states in his complaint form that he received his loan pack two days later which contains the terms and conditions. Clause 4 of those terms and conditions provide as follows:

Can I withdraw from this credit agreement immediately?

If you change your mind after entering into this credit agreement, you have the right to withdraw from it for a period of 14 days. You do not have to give any reason for doing so. This 14 day period begins on the day you received a fully signed copy of this credit agreement. If you wish to withdraw, please tell us in writing within the specified period. There is more information about this

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in the “exercising your right to withdraw” section of Part B of this Credit Agreement.

In light of all of the foregoing, I’m satisfied that the terms and conditions of the credit agreement were readily and reasonably available and accessible for the Complainant to consider before he confirmed his acceptance of those terms and conditions and that he could have exercised his right to withdraw from the agreement during the 14 day period set out above.

He chose not to exercise either of these options and I do not consider it reasonable that the Complainant decided to simply stop repaying the loan because he did not like one of the terms and conditions which he had initially accepted and not having exercised his option to withdraw from the agreement.

Furthermore, I note that the Complainant’s loan has not been sold on as he had feared or suspected.

I note the Bank has been quite reasonable in its attempts to resolve the matter.

For the reasons outlined above, I do not uphold this complaint.

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**

30 May 2019

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.