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| <u>Decision Ref:</u> | 2019-0175 |
| <u>Sector:</u> | Banking |
| <u>Product / Service:</u> | Personal Loan |
| <u>Conduct(s) complained of:</u> | Refusal to grant consumer credit |
| <u>Outcome:</u> | Rejected |

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

Background

This complaint relates to a loan application.

The Complainant is unhappy that the Provider has refused to lend him the sum of €12,000. On **08 November 2016**, the Provider refused to progress a loan application made by the Complainant. The Complainant contends that, when he sought further information on this, he was advised that the action of the Provider was due to information on his Irish Credit Bureau (ICB) report. The Provider, in its Final Response Letter dated 14 June 2017, asserts that it *“carried out a search on the ICB in good faith to allow [it] to assess a lending application”* and further submits that the information held on the Complainant’s personal profile *“appears to be incorrect from what he has advised [it] and also what [a third party lender] have advised”*. The Complainant submits that when he attempted to explain the Provider’s alleged mistake, *“none would listen”*.

The Complainant is also aggrieved at what he deems is the poor level of customer service he has received from the Provider since 07 November 2016. He contends that the Provider *“deliberately moved [him] through 5 case managers”* and that it made *“so many errors [the Provider] thought [the Complainant] would just drop the case”*. The Complainant submits that references to dates in several letters from the Provider were incorrect as well as inaccuracies in relation to which particular third party lender the Complainant had previously held mortgage loans with. The Complainant is further dissatisfied with the

amount of time it has taken to resolve this issue asserting that it has taken over 20 months and he is *“still trying to get clarity”*.

The Complainant would like the Provider to compensate him for *“the refund on a van (VAT refund plus sale price of van at time would be €4000 refund on new van and €7000 sale price of old van now probably worth €3500)”*. The Complainant would also like to be compensated for the costs of a refurbishment of his shop that he *“had to put on hold”*. He would also like to be compensated for loss of earnings from a new supplier: *“failure to seek credit for fear of being refused”*, stress and also for the time he has spent which the Complainant asserts is *“north of €10,000 plus mental meltdown”*. The Complainant contends that this incident has *“damaged [the Complainant’s and his ex-wife’s] relationship and trust as with [the Complainant’s] children”*. The Complainant also asserts that he is a *“tax compliant hard working person that pays all [his] debts”*.

The Complainant’s Case

The Complainant applied for a loan of €12,000 on 07 November 2016 by telephoning the Provider. As part of the telephone call, the Provider’s representative asked the Complainant questions about his income and outstanding debts. When asked if he had any current unpaid mortgage loans outstanding, the Complainant confirmed that he had a buy-to-let property in the South of Ireland that he was repaying on an Interest Only facility. When asked if he had any other mortgage loans outstanding, he confirmed that he did not. He further confirmed that he did not have a credit card and had no other financial commitments other than personal payments to his ex-wife on a monthly basis.

The Complainant contends that when the Provider’s representative telephoned him back later the same day, he was advised that his loan application was declined due to two outstanding mortgage loans being reported by the Irish Credit Bureau (ICB). It is the Complainant’s assertion that he was told that the two mortgage loans outstanding were linked to his former family home, now in the sole possession of his ex-wife since their separation in 2010. He contends that these two mortgages were *“paid in full”* and he never missed a payment on either of them. The Complainant is aggrieved with the poor customer service that followed when he *“then had to deal with five different case managers in [the Provider’s complaints department] with lots of errors like the letter dated 6th Dec 2016 stating further to [the Provider’s] letter dated 6th Dec 2016”*. In an attempt to demonstrate this grievance, the Complainant submits that the Provider *“dragged [him] through the ringer passing [him] on from one person to the next and eventually offered [him] 500 euro to go away”*. The poor customer service he received included a series of administrative errors made by the Provider in letters dated 06 December 2016, 14 March 2017 and 05 April 2017 following the initial submission of his complaint. The Complainant states that the actions of the Provider have caused his ex-wife to seek *“legal advice regarding the family home [he] signed over to her mortgage free”*. Furthermore, he claims that the inference by the Provider that the mortgage loan on his former family home remains outstanding has *“damaged [the Complainant and his ex-wife’s] relationship and trust as with [his] children”*.

The Provider's Case

The Provider received a telephone call from the Complainant by way of application for a personal loan on 07 November 2016. During this call, the Provider's representative asked the Complainant about the sum he would like to borrow and questions relating to his repayment capacity; these questions related to his income and existing debts.

When asked to confirm whether the Complainant had any existing mortgage loans outstanding, he explained that he had a buy-to-let property that he was repaying on an Interest Only facility. He further explained that he had two previous mortgage loans on his family home but they were paid in full, by the time he separated from his ex-wife whom he signed the property over to in 2010.

In a telephone call later that same day, the Provider's representative explained that she was seeking confirmation from the Complainant on whether he had a second mortgage loan outstanding with any other financial service provider. She explained that a second mortgage loan was being reported on by another institution under his name, address, date of birth and occupation though the Provider did not have sight of the identity of this provider. The Provider's representative asked the Complainant whether he was a guarantor on any other mortgage loan, which he may have forgotten about, and he stated that he was not.

The Provider contends that, in assessing the Complainant's loan application, it performed a check with the Irish Credit Bureau (ICB) having firstly sought permission from the Complainant. The Provider notes *"the ICB report showed 2 mortgages registered in the name of the Complainant"*. It was at this point that the Provider's underwriting department sought clarity on the variance between the Complainant's application and the ICB record of the Complainant. It asserts that it *"was unable to progress the loan application as the [Provider] could not perform an accurate calculation of the Complainant's repayment capacity without firstly having clarification on the additional mortgage which was reporting on the Complainant's ICB report"*.

As the Complainant denied any knowledge of the second reporting mortgage loan on his ICB report, the Provider states that its *"agent could only surmise that the ICB must be incorrect in response to the information provided by the Complainant"*. Furthermore, the Provider asserts that *"the Complainant was expressly advised that the [Provider] had not declined his application and was not in a position to move forward until matters had been clarified"*.

The Provider responds to the Complainant's contention that the customer service he received from it was below an appropriate standard. This customer service relates to what the Complainant contends was an excessive number of case managers dealing with his situation, which the Provider refutes. It points out that the number of case managers (over almost two years) arose due to annual leave commitments and the Complainant's additional grievances being referred to other departments within the Provider, for investigation.

The Provider, in the Final Response Letter dated 14 June 2017, acknowledges the administrative errors it made in relation to letters it sent dated 08 April 2017 and 11 May 2017, and on this basis, has ultimately offered the Complainant compensation of €1000 in

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acknowledgement of this. This offer remains open to the Complainant. The Provider advises that this offer is *“by way of apology and for any confusion caused as a result of these errors”*. In addition, the Provider would like *“to reiterate that [the Complainant] is a valued customer”*.

The Complaint for Adjudication

The complaint is that:

- The Provider did not progress the Complainant’s loan application citing information on his ICB report; and
- The Provider’s level of customer service was below the standard the Complainant was entitled to.

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 16 May 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.

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

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Analysis:

Firstly, as a general note, this Office will not investigate the details of any decision on lending which is a matter between the Provider and the Complainant, and does not involve this Office, as an impartial adjudicator of complaints. This Office will 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***. In this instance however, I note that the Provider did not decline the Complainant's application for a loan. Rather it held progress of the application, pending receipt of clarification regarding information on the Complainant's ICB report.

Secondly, as set out to the Complainant in a letter from this Office dated 11 October 2018, the Provider cannot give assurances about his credit rating with the ICB. Having reviewed the complaint at the beginning of the Investigation process, this Office noted that, when asked in the Complaint Form how he wished the complaint to be resolved, the Complainant indicated that he would "*need to be assured that [his] credit rating is unaffected (in writing)*". The Complainant has been told that this is not something that the Provider has any control over. The Provider, in this instance, did not lend monies to the Complainant on the occasion of this application and therefore the said loan application has had no impact on the Complainant's profile with the ICB.

Moreover, in examining the complaint as a whole, it would appear that initially there was a degree of confusion on the Complainant's part, regarding the function and role of the Irish Credit Bureau (ICB). With that in mind, I think it would be useful to explain the role of the ICB, its purpose and its use when lenders are assessing a credit application, given that it significantly predates the Central Bank's Central Credit Register, which is now in place.

The ICB is described, on its own website, as a library or database that receives information from the majority of Irish lending institutions relating to a borrower's previous performance of credit agreements between that borrower and financial institutions. It is important to note, and particularly relevant to this complaint, that the primary purpose of the ICB is to reflect a full picture of a borrower's credit history, good and/or bad. Typically, the borrower's repayment profile history is reported over a 24-month repayment period and information is held for five years after a credit agreement is concluded. Key to this complaint is that a provider, with the permission of a borrower, may search the borrower's previous history using their name, date of birth and address(es) used by the borrower in relation to financial transactions. Such a search typically takes place when a borrower is seeking credit facilities.

The Complainant is unhappy that his application for a loan was not progressed because there was a variance between his application to the Provider and what was recorded by the ICB. The Complainant contends that he was advised during a telephone call from the Provider on 07 November 2016 that his ICB report was displaying two outstanding mortgage loans, when he had disclosed having only one such mortgage loan. One mortgage loan was for circa €180,000 and the other for circa €193,000, the Provider explained. In several follow up telephone calls between the two parties on 07 and 08 November 2016, the Provider's

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representative asked the Complainant if he was a guarantor for another mortgage loan and he advised that he was not.

In a submission to this Office from the Complainant dated 07 June 2018, the Complainant refers to himself as being a guarantor of his daughter's mortgage loan, a fact that he omitted from the original telephone application to the Provider and subsequent calls that followed in the days after the 08 November 2016. In fact, on 11 January 2019, the Complainant responded to say that he believes that the *"cornerstone of [the Provider's] case was [his] forgetting [he] was a guarantor on a mortgage for his daughter in 2009"*. He goes on to say that he *"got a loan from same bank for same amount in 2010 and [the Provider] must have forgotten about same mortgage and did not do [its] homework either in 2010 and 2016 (fully paid back)"*.

It was not a matter for the Provider, however, to *"forget about"* or indeed to *"do its homework"* to investigate the Complainant's loans with other banks; it was a matter for the Complainant to furnish the Provider with the correct information regarding any such loans, as the Provider would not have had access to any level of detail of such loans, and was relying on the Complainant to give it accurate information.

Furthermore, the Complainant expresses his dissatisfaction that the Provider *"did not explain to a lay person the specifics of how the ICB works"*. The Complainant further contends that the act of not informing him of the specifics, sent him on a *"fool's errand"* to a third party lender whom he previously held a mortgage loan with and, he contends, *"had no reason to hide if [he] had remembered it"*. It is unclear to me whether the Complainant ever asked the Provider to explain the function or role of the ICB, in which instance the Provider could have referred the Complainant to the ICB's website, in order to be helpful. It is not the responsibility however of the Provider to inform its customers who are seeking credit facilities, of the purpose of the ICB and how it or indeed how other third party lenders report to it.

As to the substantive complaint presented, I am satisfied that the Provider did not act wrongfully or in any way that appears to be contrary to **section 60(2)** of the **Financial Services and Pensions Ombudsman Act 2017**. I take the view that its refusal to progress the Complainant's application for a loan was not *"unreasonable, unjust, oppressive or improperly discriminatory in its application to the complainant"*. In fact, the Provider's staff member did her best to help the Complainant try to remember details of other mortgage applications suggesting, for example, that he could have been a guarantor. Interestingly, this is precisely the explanation which transpired to be correct, but the Complainant remained adamant that this was not the position. For this reason, and for those discussed above and based on the evidence before me, I do not consider it appropriate to uphold this element of the complaint.

The Complainant is also dissatisfied with the Provider's level of customer service afforded to him over a twenty month period whilst he attempted to *"get some clarity"* following the Provider's actions in not progressing his application for a loan. This customer service, the Complainant explains, was below the standard he had come to expect as a customer of the Provider since about 1967. Following on from his initial grievance surrounding the non-

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progression of his loan application, the Complainant was upset that he *“then had to deal with five different case managers in [the Provider’s complaints department] with lots of errors like the letter dated 6th Dec 2016 stating further to [its] letter dated 6th Dec 2016”*. The Complainant states that he felt like he was being *“pawned off”* from one representative to the next and the Provider *“eventually offered [him] 500 euro to go away”*. This 06 December 2016 dated letter that the Complainant refers to is a letter of the same date stating *“further to [the Provider’s] letter dated 6th December 2016...”*. The Complainant is further aggrieved that the Provider sent a letter dated 14 March 2017 confirming it had received the Complainant’s letter on 08 April 2017 and that it aimed to respond to it by 05 April 2017. In a further letter dated 05 April 2017, the Provider advises that it will *“at the very latest, [be writing] to [the Complainant] again by 8 April 2017”*.

Moreover, another example illustrated by the Complainant of what he deems to be poor customer service is what the Complainant refers to as an *“excuse”* as to why his loan application was not progressed. He contends that he was told *“lending conditions had changed when [he] brought up the €10,000 loan in 2011 which was fully paid back”*.

Having examined the evidence before me, I accept that the Complainant was frustrated at having to repeatedly explain his grievances to five different representatives working for the Provider over more than a 20-month period. The Provider’s response to this aspect of the complaint is that *“it was not possible to have the matter handled by one person in its entirety. This was more a matter of normal matters such as annual leave and separate departments conducting the investigation”*. I am of the opinion that it was not unreasonable that one case manager did not deal with his complaint. Over nearly a two year period, I can understand how a complaint, and then subsequent additional complaints from the Complainant, could not be dealt with by the same employee. I do accept, however, that a certain level of stress, frustration and confusion arose out of the Provider’s letters of 06 December 2016, 14 March 2017 and 05 April 2017. Whilst one such error was unfortunate, three successive errors must surely have caused the Complainant tremendous annoyance.

In a letter to the Complainant’s solicitor dated 14 June 2017, the Provider acknowledges the *“administrative errors”* it made when investigating the Complainant’s complaint. Contained in its letter dated 11 May 2017 the Provider offered the Complainant €250 in full and final settlement of his entire complaint, which has subsequently been uplifted twice, to what is now, in my opinion, a very generous offer of €1000, which remains open to the Complainant to accept.

Consequently, as the Provider has long since accepted that it made these administrative errors, and has offered a more than generous level of compensation to the Complainant, which it is open to him to accept, I do not consider it necessary or appropriate to uphold this element of the complaint. The Complainant can accept the compensation payment offered by the Provider if he wishes to do so, and in that event, he should communicate with the Provider in the short term, as the Provider cannot be expected to keep the offer of compensation open to the Complainant indefinitely.

Conclusion

My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint 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.

**MARYROSE MCGOVERN
DIRECTOR OF INVESTIGATION, ADJUDICATION AND LEGAL SERVICES**

10 June 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.