An tOmbudsman Seirbhísí Airgeadais agus Pinsean
Financial Services and Pensions Ombudsman

Decision Ref:	2019-0178
Sector:	Banking
Product / Service:	Lending
Conduct(s) complained of:	Maladministration Failure to provide product/service information Mis-selling (banking)
Outcome:	Rejected

LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

This complaint relates to the Complainants' dissatisfaction with the administration and handling of their application for a home improvement loan, which was initially applied for by the first Complainant, and after this was refused, was applied for as a joint loan.

The Complainants are also dissatisfied with the conversion of the first Complainant's current account, which was in his sole name, into a joint account.

The Complainants' Case

The first Complainant applied for a home improvement loan in the sum of €35,000 which was intended to be used, along with money that the second Complainant had received from a personal injury settlement, to carry out home improvements on a property owned jointly by the first and second named Complainants.

The Complainants submit that the first Complainant had an initial meeting with the Provider on **6 October 2015** in a local branch of the Provider regarding the loan application. After this meeting, and after the required documentation had been furnished, the first Complainant's loan application for €35,000 was rejected. He was advised of this on **12th October 2015** and as an alternative, the Complainants submit that they were offered a joint loan of €20,000,

and they say they were forced to change the first Complainant's personal account into a joint account, and deposit the second Complainant's personal injury settlement cheque into that account, which they did.

In early December 2015, the Complainants wrote to the Provider, noting that the second Complainant's cheque had been lodged and requesting an update on the loan situation. Later that month, the Complainants were asked by the Provider to attend a meeting with a staff member of the Provider (Ms A) at the local branch in order to finalise the loan. Upon arrival at the branch, the Complainants were met by a different member of staff who informed them that meetings at the branch were overrunning that day and that Ms. A was also attempting to resolve an issue for them. They were asked to wait in the area and were told that they would be contacted in about an hour to come back in to the branch.

The Complainants waited for over three hours in the area and were not contacted. They assumed Ms A had been caught up due to the busyness of Christmas and that everything was ok with the loan, so they left and went home.

Work was being carried out on the Complainants' property until Christmas, and the builder was paid by way of bank draft (of the Provider) for the initial work carried out. Work on the property commenced again after the Christmas holidays and at different stages the builder was again paid by bank draft.

The Complainants wrote to Ms A on **5 May 2016** informing the Provider of the progress made and seeking clarification on the loan. A different staff member contacted the Complainants informing the first Complainant that there had never been any loan approval, let alone any loan. She informed the Complainants that the loan application had expired and that there had been a problem with the first Complainant's ICB record. When it transpired that there was no issue with the first Complainant's ICB record, they were advised that there was an issue with the second Complainant's ICB record in that it showed a credit union loan which had not been disclosed on the loan application form.

The Complainants chose not to reapply for a loan and made a formal complaint with the Provider. The Complainants were unhappy with the response to their complaint, and now make the following complaints to this Office:

1. Inability to service a loan of €35,000

The Complainants submit that after Ms A input the first Complainant's information into the Provider's loan calculation system, his application was accepted by this program, which was a clear indication that he had sufficient funds to service the initial loan. He submits that he also had an eight year proven history with the Provider of paying larger monthly payments that this loan would demand.

2. Forcing a personal loan application into a joint loan

The Complainants submit that even if €20,000 was the most that the Provider could loan, this loan should have been offered to the first Complainant in line with his application for a

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personal loan, and the Provider should not have forced the first Complainant into making a joint loan application and making it a condition of approval.

3. Bad Advice

The Complainants submit that the Provider gave them bad financial advice. They submit that as financial experts, the Provider would have been aware that personal injuries awards are not taxed, and that both of the first Complainant's accounts were subject to tax, and yet the Provider advised the Complainants to turn the first Complainant's personal account into a joint account. The Complainants submit that the Provider then knowingly accepted the second Complainant's cheque into the taxable account. They also submit that they should have been made aware of the dangers of a joint account by the Provider when they were being advised to open a joint account and that this was not done.

4. Lack of alternative loan proposition

The Complainants submit that the Provider had documentation which proved that the Complainants were the outright owners of the property of which they intended to carry out home improvements on with the loan monies, but its loan department failed to offer any possible arrangement of securing the loan by way of a mortgage.

5. Hidden information

The Complainants submit that the Provider had a duty to inform them as soon as possible once any issue regarding their loan application arose. The Complainants submit that the Provider obtained the second Complainant's ICB Report on **11 November 2015** which displays a loan from a credit union. The Complainants submit that had this been a legitimate issue stopping the loan approval the Complainants should have been informed straight away.

The Complainants submit there were a further four ICB reports available to the Provider concerning the second Complainant, all showing a credit union loan, before the December meeting, and despite those, the meeting was not cancelled nor was there any issues in respect of the loan application communicated to them. The Complainants submit that the Provider left them believing that the loan had been approved and in so doing it allowed them to completely deplete their capital and destroy any possibility of dealing with any other financial institution in order to obtain a home improvement loan.

6. Resulting financial losses

The Complainants submit that instead of continuing work towards completion of their home, they have had to let their builder go, and are unsure of when they will be able to re-engage him. They submit that they do not believe that any other builder will take on a half completed project, and definitely not for the same amount of money as a builder pricing a job from start to finish.

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The first Complainant states that, when he was made aware of the issue with the loan from the Provider, he was able to transfer funds and begin negotiations with his local credit union. He transferred €10,000 into his recently reactivated account, but the credit union requires three months of savings before it will consider his loan application. They assert that they will therefore now have to leave the €10,000 on deposit and borrow the full €35,000 to finish this project. As a result, they will be paying higher repayments and interest on the extra €10,000.

Further, because of the initial loan with the Provider being a joint loan application, it has directly affected the second Complainant's credit union borrowings, and, as such, any loan granted will be below the €20,000 borrowings necessary to complete the repairs.

The Complainants submit that there is also the extended cost of rental accommodation which they now have to incur as their property will not be habitable until the works are completed.

7. Complaint Handling Centre response

The Complainants submit that several issues that they raised in their letter of complaint to the Provider were not addressed in the Provider's response letter. The Complainants' letter of complaint to the Provider dated **17 May 2016** also sets out complaints of questionable interference taking place with their loan application, that the ICB is supplying different information to the Provider than in personal reports, that their details with the Provider were hacked or being used by another party, questions as to how, if their information has not been hacked, the Provider obtained information that there was an issue with the first Complainant's ICB report and that an employee of the Provider had attempted to deliberately "scuttle" the Complainants' loan. They also complain that they were seriously sceptical that the Provider's staff members could review ICB reports, that *"someone in PLU* [the Provider's Personal Loans Unit] *had formulated a plan to wrongly steer"* the Complainants into a particular course of action, which they believe was motivated by the second Complainant's personal injuries settlement cheque for €53,000.

They further complain that the Provider's criteria that "applications can be in sole or joint names" was disregarded by the Personal Lending Unit (the "**PLU**") and that the PLU decided to "*create their own terms and conditions"* and the Complainants query why, if an ICB check was done on the second Complainant when they were opening the joint account and this showed the second Complainant's credit union loan, that the PLU did not stop the amendment of their current account from a sole account to a joint account as soon as it became aware of the existence of the credit union loan.

The Complainants state, in a letter to this Office dated **6 February 2018**, that they never received any written information from the Provider regarding any aspect of their loan applications. The Complainants feel that they have been caused unnecessary financial hardship, stress and anxiety, and that the actions of the Provider have caused harm to their borrowing potential.

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The Provider's Case

The Provider has responded to each complaint in turn:

1) The Provider was unable to service a loan of €35,000

The Provider states that the initial loan application of €35,000 over 7 years in the sole name of the first Complainant was not accepted at the outset by its system. It maintains that the decision made was "Refer" which meant that the application was required to be escalated to its PLU for further consideration, which, it says, is clear from the loan documentation. As a result of the 'Refer' decision, the Provider maintains that it was necessary for Ms A. to escalate the lending proposal to the Provider's PLU for further consideration. The Provider maintains that even if the decision had not been 'Refer', Ms A would still have been obliged to escalate the application to the Provider's PLU as set out in the affordability section of the Provider's lending criteria, wherein it states, *"Regardless of the system decision, all loan and overdraft applications for self-employed customers must be referred to the Personal Lending Unit."*

The Provider submits that Ms A prepared a credit submission dated **14 October 2015** to the Provider's PLU and a proposal document where, within the recommendation section, Ms A recommended that the PLU approve the application.

The Provider maintains that it deferred the application for the following reasons:

i. insufficient income to service/repay the facilities;
ii. disposable income of €880 per month was too low for 2 adults and debt service ratio was too high at 57%;
iii. this disposable income was further negatively impacted if reduced social welfare payments were used;
iv. amount requested was too high on an unsecured basis and in line with income levels;
v. borrowing was for a joint purpose on a jointly owned property and preference was that loan was in joint names; and
vi. the first Complainant had no lending or savings history either internally or externally to support repayment ability.

The Provider submits that it was then willing to consider an alternative option: that the loan be applied for in joint names to enable a full assessment to be completed and provision of full professional quotes provided and a breakdown of works to be completed on the property. Draft 2014 accounts for the first Complainant and a letter from the solicitors clarifying the source of funds for the €53,000 contribution that the second Complainant was making toward the cost of the property renovations were also requested.

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2) The Provider forced a personal loan application into a joint loan

In response to the Complainants' complaint that the Provider forced a personal loan application into a joint loan application, the Provider submits that, as the purpose of the loan was for renovations to a property held jointly by both Complainants, the preference of the Provider's PLU was that the loan would be applied for in joint names. The Provider does not accept that the Complainants were forced to put the loan application in joint names or that it was a condition of approval. The Provider maintains that the Complainants were free at any stage not to progress with the loan application if they felt that they were not happy with the Provider's requirements, including the Provider's comments about the loan being progressed in joint names.

3) The Provider gave bad advice

In response to the Complainants' submission that they were given bad advice in respect of their loan application, the Provider points out that it did not provide the Complainants with any advice whatsoever nor was it authorised to do so. The Provider states that its loan application interviews are conducted on a non-advice, information only basis. In response to the Complainants' submission that, as financial experts, the Provider should have been aware that personal injury awards are not taxed and that the Provider knowingly accepted the second Complainant's cheque for €53,000 into an account that was subject to tax, the Provider maintains that its staff do not and are not authorised to provide tax advice to customers. The Provider asserts that the only tax that currently applies to its personal accounts is Deposit Interest Retention Tax ("DIRT"). This tax is payable on the interest that is paid by the Provider on interest bearing accounts. The current account held by the Complainant is non-interest bearing and therefore would not be subject to DIRT.

4) Provider failed to provide an alternative loan proposition

In response to the Complainants' submission that the Provider's loan department failed to offer them the option of securing the loan by way of mortgage, the Provider maintains that the role of the lending unit was to initially consider the first Complainant's application for a loan of €35,000 over 7 years in his sole name. The amount and term requested in relation to that was within the Provider's criteria for a home improvement loan. Once this request was deferred, the Complainants proceeded with an application for €20,000 in joint names. That application was deferred and eventually expired after 30 days.

The Provider submits that there was no onus on its lending unit to offer the Complainants facilities by way of a mortgage. If the Complainants wanted to borrow €35,000, or any other sum, by way of a mortgage, the Provider states that they were free at any stage to progress with a mortgage application in line with the Provider's lending criteria for mortgage applications.

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5) Hidden information

In response to the Complainants' submission that the Provider has hidden information, the Provider notes that the Complainants' ICB report lists the points at which loan applications are keyed in using its Customer Account Opening System. The data from the ICB is then returned based on each application and that data forms part of the Provider's decision process. This data can be also checked and reviewed by the Provider's PLU if an application is submitted to them, but the ICB information cannot be viewed by the branch.

This explains why, according to the Provider, that the PLU was able to see details of the second Complainant's credit union loan and sought clarification, as it had not been referred to on the loan application submitted.

The Provider further submits that the enquiry on the second Complainant's ICB report dated **11 November 2015**, which the Complainants state was prior to the second Complainant being added to the loan account, relates to the addition of the second Complainant to the first Complainant's current account in November 2015. As a current account is considered a credit facility, the application to open a joint account was required to be referred to the PLU, which then undertook an ICB enquiry on the second Complainant prior to opening the joint account.

The Provider states that two loan applications keyed on **20 November 2015** on Customer Account Opening in joint names of both Complainants were subsequently cancelled due to keying errors.

6) The Complainants suffered resulting financial losses

In response to the Complainants' complaint that the Provider caused them to believe that their loan had been approved, causing their capital to be depleted and destroying the possibility of them dealing with any other financial institution in respect of obtaining a loan, the Provider expresses apology if any action on its behalf caused such a misunderstanding, but maintains that the Complainants were never provided with a formal loan offer or advised that their loan had been approved. The Provider further notes that the Complainants said that they "assumed" everything was okay.

The Provider accepts that there is evidence of poor service in respect of follow up contact with the Complainants after 24 December 2015.

The Provider maintains that none of the three consumer credit loan application forms have been signed by anyone on behalf of the Provider and accordingly they are therefore not valid loan agreements. Further, the Consumer Credit loan forms pertaining to the Complainant's loan application confirm under *"availability"* that the loan must be *"drawn down in one sum within one month of this credit agreement. If it is undrawn by the end of the one month period, the loan shall be cancelled."*

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In response to the Complainants' complaint that they suffered resulting financial losses, the Provider maintains that, while it is sorry to hear of the impact this matter has had on the Complainants, loan approval was never granted by the Provider

7) The correspondence from the Provider's complaint handling centre in response to their complaint was insufficient

In response to the Complainants' complaint regarding the letter of response form the Provider's complaint handling centre, the Provider submits that its letter of **26 July 2016** did refer to the fact that a lesser application for €20,000 was submitted in joint names of both Complainants, and it also set out how an ICB search by the Provider had established that the second Complainant had borrowings with a Credit Union, which had not been disclosed with the loan application.

The Provider rejects the Complainants' complaint in their letter to the Provider dated **17 May 2016** wherein they state that "questionable interference" took place with their loan application. The Provider maintains that Ms. A's, intention was to assist the Complainants in having their loan application approved, but she was required to operate within the Provider's lending processes and criteria. She was not in a position to offer the Complainants formal loan approval until all matters, including clarification regarding the second Complainant's ICB report, had been received. The Provider submits that there is no evidence of any interference with the Complainants' application.

In response to the Complainants' question as to whether the ICB is supplying different information to the Provider than in personal reports, the Provider maintains that copies of both of the Complainants' ICB reports, dated **16 May 2016** and **23 May 2016,** were originally provided by the Complainants to this office as the Provider's Complaint Handling Centre does not have access to any customer's ICB record.

In response to the Complainants' question as to whether their details held by the Provider were hacked or being used by another party, the Provider submits that, while it is sorry that the subject of this complaint has caused the Complainants to have any concerns about the security of their information, the Provider maintains that it takes its data protection and security obligations seriously, and that, in investigating this complaint, it has found no evidence of any breach of its data protection or security obligations.

In response to the Complainants' question as to how, if their information has not been hacked, the Provider obtained information that there was an issue with the first Complainant's ICB, the Provider submits that, in investigating this point, it has found no evidence of any issue with the first Complainant's ICB. It has, however, submitted that the second Complainant's ICB record shows borrowings with a credit union. As this information was not disclosed in the loan application, the Provider submits that its lending unit requested clarification from the Complainants, through its branch, on what this related to.

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The Provider rejects the Complainants' complaint that an employee of the Provider attempted to deliberately "scuttle" the Complainants' loan. The Provider maintains that the documentation submitted by Ms A, with each of the loan applications submitted to the Provider's PLU, demonstrates that she in fact recommended that the loan be approved. The decision rested with the PLU and the Provider maintains that it is entitled not to approve a loan application and it is also entitled to seek certain information including clarification around ICB records to allow it to make a decision on an application.

Ultimately, the Provider maintains that there has been no breach of contract by the Provider in respect of the loan application, and that it was not in a position to approve the loan until the PLU was satisfied with the proposal in line with its lending criteria. It also apologises that a return call was not made to the Complainants after they called into the Provider's branch. The Provider notes that the staff member that the Complainants were dealing with went on long term leave unexpectedly and the Complainants' loan application didn't progress.

In response to the Complainants' submission that they were seriously sceptical that the Provider's staff members could review ICB reports, the Provider maintains that staff members in its branches do not have access to ICB reports: when a loan application is keyed, it generates an ICB search "footprint" but staff members in its branches do not have access to view this. The ICB report that is generated can be viewed by staff members in the Provider's PLU only.

The Provider rejects the Complainant's allegation that *"someone in PLU had formulated a plan to wrongly steer"* the Complainants into a particular course of action, which they believe was motivated by the second Complainants cheque for €53,000. The Provider stands by its submissions regarding why further information and clarification was required by the PLU, and maintains that it is entitled to apply its lending criteria and commercial discretion in considering and either approving or declining a loan application.

The Provider rejects the Complainants' submission that the Provider's criteria *"applications can be in sole or joint names"* was disregarded by the Personal Lending Unit and that the Personal Lending unit decided to *"create their own terms and conditions."* The Provider maintains that the fact that applications can be accepted in sole or joint names does not mean that every application can be accepted either solely or jointly, but that the Provider can accept a sole application or a joint application, and that ultimately, it is entitled to use its lending criteria and commercial discretion to decide on whether an application can be approved.

The Complainants query why the personal lending unit did not stop the amendment of their current account from a sole account to a joint account as soon as it became aware of the existence of the second Complainant's credit union loan. They also allege that the existence of the credit union loan on the second Complainant's ICB was *"purposely hidden"* from them by the Provider when it became aware of it.

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The Provider, in response, submits that when the PLU became aware of the existence of the credit union loan on the ICB report, it contacted the local branch to advise that the lending decision had been deferred as there were other facilities evident on the ICB and details of these facilities were required to be submitted. The Provider notes that it is the responsibility of a loan applicant to furnish the Provider with all relevant information, including other borrowings, in order that a lending assessment can be made.

Ultimately, the Provider submits that it is disappointed to hear that the Complainants believe that there were underhand reasons that the Provider did not grant them a loan in 2016, and confirms that it was not possible for such a loan to be approved until all matters, including undisclosed borrowings on the second Complainant's ICB report, had been clarified.

The Provider has offered the sum of €5,000 to the Complainants in acknowledgement of the service issues which the Complainants experienced in their dealings with the Provider.

The Complaints for Adjudication

The complaints for adjudication are that;

1) the Provider determined that the first Complainant was unable to service a loan of €35,000;
2) the Provider forced a personal loan application into a joint loan;
3) the Provider gave bad tax advice;
4) the Provider failed to provide an alternative loan proposition;
5) The Provider had hidden information from the Complainants;
6) the Complainants suffered resulting financial losses due to the Providers actions; and
7) the Provider's complaint handling centres response to the Complaints complaint letter was insufficient.

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 Complainants were 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

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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 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 issue of my Preliminary Decision, the following additional submissions were received from the parties:-

1. Submission from the Complainants dated 25 April 2019.
2. Submission from the Provider dated 14 May 2019.
3. Submission from the Complainants dated 22 May 2019.

Analysis

Having reviewed and considered the post Preliminary Decision submissions together with all submissions made by the parties and evidence provided in respect to this complaint, I now set out my Decision. I will deal with each complaint separately.

1. Inability to service a loan of €35,000

While the Complainants maintain that the first Complainant's application was accepted by the Provider's system, I have not been provided with any evidence to support this submission. The Provider maintains that the decision made was "Refer" which meant that the application was required to be escalated to its PLU for further consideration. The Provider has also given at least six reasons for the decisions to refer the application to the PLU.

The Complainants in their post-Preliminary Decision submission of 25 April 2019, state "*This apparent approval of my application seemed to allow the loans officer to be confident and happy enough to discuss repayment options with me, all of which may have contributed to my somewhat hasty assumption from the get go".*

The fact that the loans officer discussed possible repayments with the Complainants is not an indication that the loan has been approved. I accept that an agent of the Provider would have been required to discuss loan repayments at application stage even prior to the sanctioning of a loan.

I find that the Provider required that the loan application be escalated to its PLU for further consideration and to make a final decision on the granting of the loan application, and it was entitled to do so. I accept that no loan was in fact approved.

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2. Forcing a personal loan application into a joint loan

The Complainants submit that the Provider should not have forced the first Complainant's application into a joint loan by making it a condition of loan approval.

In their post-Preliminary Decision submission of 25 April 2019, the Complainants state:

> "*To change my personal account to a joint account it needed to be approved by, none other than the PLU (Provider Lending Authority), my account was regarded as a credit facility*. [The Provider] "*Form to Add an Additional Person to an Account" is no less than 21 pages long. That is more paperwork than my loan application forms for €35K.* The Complainants further state "*Joints accounts are of such quagmires, in financial and legal service, posing dangers to all the account holders. A Minefield of risks so complex that none other than the Law Society of Ireland issued guidelines on such financial arrangements to its own members*."

The Provider in its post-Preliminary Decision dated 14 May 2019 submits that the joint account mandate that both Complainants signed on 3 November 2015 set out the basis for the joint account authority. The Provider states that it had fulfilled its obligations in respect of the first named Complainant's request to have the second named Complainant added to his account. The Provider has also furnished a copy of the "*ADD A NEW PARTY TO AN ACCOUNT*" form that both Complainants signed on 3 November 2015. On signing Section 11 of this form, both Complainants confirmed that they had "*Read and understood all relevant literature for the account including the brochure, terms and conditions and fees and charges leaflet".* I believe the Provider furnished the Complainants with sufficient information and it was a matter for the Complainants to decide whether or not operating a joint account was in their own best interests. It was not for the Provider to decide or advise as to whether or not a joint account was the most appropriate account for the Complainants.

The Complainants have not established that the avenue of a joint loan was a condition of approval. I have been provided with no evidence to suggest that is what was conveyed. The Complainants were free at any stage to negotiate the loan application and/or not to progress with the joint loan application at all. At that point, they had not invested anything in the situation, and would not have been at any loss had they decided not to progress. The Provider has indicated its reason for its preference that the loan be applied for in joint names and I find that it was entitled to indicate this to the Complainants.

3. The Provider gave bad tax advice

In my view, the Provider is not authorised to provide the Complainants, or any customers, with tax advice. It is not the duty of the Provider to give tax advice to customers either. In any event, I note that the Complainants' account does not attract interest and would not be subject to Deposit Interest Retention Tax (DIRT).

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4. Provider failed to provide an alternative loan proposition

The Complainants submit that the Provider had documentary proof that the Complainants were the outright owners of the property, the intended subject matter of the home improvements, but its loan department failed to offer any possible arrangement of securing the loan by way of a mortgage. It is clear that the amount and term initially requested was within the Provider's criteria for a home improvement loan. The Provider submits that there was no onus on its lending unit to offer the Complainants facilities by way of a mortgage, and that the Complainants were free at any stage to progress with a mortgage application in line with the Provider's lending criteria for mortgage applications.

Chapter 5 of the Consumer Protection Code 2012, Knowing the Consumer and Suitability – sets out at provision 5.17:

> *"A regulated entity must ensure that any product or service offered to a consumer is suitable to that consumer, having regard to the facts disclosed by the consumer and other relevant facts about that consumer of which the regulated entity is aware.*
> *…*
>
> *where a regulated entity recommends a product to a consumer, the recommended product must be the most suitable product for that consumer."*

Having regard to this, I find that the amount and term initially requested was within the Provider's criteria, and suitable, for a home improvement loan and there was no onus on its lending unit to offer the Complainants facilities by way of a mortgage.

5. Hidden information

The Complainants submit that the Provider had a duty to inform them as soon as possible once any issue regarding their loan application arose. The Complainants submit that the Provider obtained the second Complainant's ICB Report on 11 November 2015 which displayed a loan from a credit union.

The Complainants submit there were a further four ICB reports concerning the second Complainant, all showing a credit union loan before the December meeting, and despite those, the meeting was not cancelled nor were there any issues communicated.

In response to the Complainants' submission that the Provider has hidden information from them, the Provider notes that the Complainants' ICB report lists the points at which loan applications are keyed in using its Customer Account Opening System. The data from the ICB is then returned based on each application and that data forms part of the Provider's decision process. This data can be also checked and reviewed by the Provider's PLU if an application is submitted to it, but the ICB information cannot be viewed by the branch.

This explains why, according to the Provider, the PLU was able to see details of the second Complainant's credit union loan and sought clarification, as it had not been referred to on the loan application submitted.

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The Provider further submits that the enquiry on the second Complainant's ICB report dated 11 November 2015, which the Complainants state was prior to the second Complainant being added to the loan account, relates to the application to add the second Complainant to the first Complainant's current account in November 2015. As a current account is considered credit facilities, it was required to be referred to the PLU, who then undertook an ICB enquiry on the second Complainant prior to converting the current account into a joint current account.

In my view, there is no evidence to suggest that the Provider has deliberately hidden information from the Complainants. The Provider has given a clear explanation as to the workings of the system and what happened over the course of November regarding the ICB reports.

6. The Complainants suffered resulting financial losses

It is clear from the documentation and submissions of the Complainants that the Complainants were not fully certain that their loan had been approved at any stage. On 2 December 2015, the first Complainant wrote to Ms A outlining as follows: *"Thank you for informing me about the situation regarding our last arranged meeting. We have lodged the cheque for €53,000 with [local branch] …while not urgent it would be nice to have some indication of how our loan application is progressing. If you have received word would you please contact me…"*

Further, the first Complainant states in his complaint to this Office dated 10 August 2016 that *"On the 05/05/2016 I wrote to the loans officer, [staff member], informing her of the progress that was made and seeking clarification of our loan."*

I have not been provided with any evidence that the Complainants were ever provided with a formal loan offer or advised that their loan had been approved. Therefore, the Provider cannot be held to be liable for any resulting financial loss.

While the Complainants were perhaps somewhat hasty in concluding that their loan application had been approved, this seems to me to be a situation that could have been avoided if there had not been such a lack of communication on the part of the Provider, which the Provider has admitted, and a failure to provide adequate customer service to the Complainants. I will deal with this aspect of the complaint later.

7. The Provider's complaint handling centre letter was insufficient

Chapter 10 of the Consumer Protection Code 2012 sets out certain obligations on regulated entities in respect of complaints handling and complaints resolution, to include the following provisions, relevant to this complaint:

> *"Complaints Resolution*
> *…*
>
> *10.9 A regulated entity must have in place a written procedure for the proper*

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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 Complainants submit that several issues that they raised were not addressed in the letter from the Provider's Complaints Handling Centre of **17 May 2016**. In my view, the Provider's response letter of **26 July 2016** covered the issues discussed on a general level. I note this letter stated:

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> *"We would be very happy to reconsider your joint loan application for €20,000 if you would like to return to the branch and meet with [named agent] who would be delighted to meet with you personally…"*

The letter of 26 July 2016 also set out how an ICB search by the Provider had established that the second Complainant had borrowings with a Credit Union, which had not been disclosed with the loan application. The Provider also admitted poor customer service and made a goodwill gesture in this letter. The Provider also notes that on a few occasions since October 2015, the Complainants were invited to come in to the local branch to meet with a member of staff but those meetings did not take place. This demonstrated at least some motivation to resolve issues.

Every customer of a financial service provider is entitled to expect a good service and to have things put right if they go wrong. When things do go wrong, it is important that that financial service provider manages complaints properly so that the customer's concerns are dealt with appropriately and any additional hardship is avoided. The process should be clear and straightforward and readily accessible to customers in order to avoid a complaint escalating unnecessarily. I find that the Complainants have not established in the circumstances of this complaint that the Provider acted in breach of the requirements of the Consumer Protection Code in the manner in which it managed the Complainant's complaint.

In early December 2015, upon arrival at the branch, the Complainants were met by a different member of staff who informed them that meetings were overrunning and that Ms. A was unavailable as she was also attempting to resolve an issue for them. They were asked to wait around the area and were told that they would be contacted in about an hour to come back in to the branch.

The Complainants waited for three hours and were not contacted. They submit that they assumed Ms A had been caught up due to the business of Christmas and that everything was ok with the loan so they left the area and went home. The Provider has admitted in its response letter that it is sorry for the poor service the Complainants experienced in December 2015 in that a return call was not made to the Complainants after they called to the Provider's local branch.

While I accept that the Complainants received a very poor service, I cannot accept that a loan had been approved for them. They had, in **2 December 2015**, written to Ms A outlining as follows: *"Thank you for informing me about the situation regarding our last arranged meeting. We have lodged the cheque for €53,000 with [local branch] …while not urgent it would be nice to have some indication of how our loan application is progressing. If you have received word would you please contact me…".*

Only three hours previously, the Complainants had been told that there was an issue in relation to their loan application.

They had not been made any offer of a loan at any point, nor had they signed any loan documentation. In a letter to this Office dated **6 February 2018**, the Complainants note that

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they never received any written information from the Provider regarding any aspect of their loan applications.

I believe it would have been reasonable for the Complainants, in light of the failures of the Provider regarding communication, to contact the Provider regarding the loan, rather than wait six months to ascertain the position and continue paying bank drafts to the contractor and undergoing home improvement works in the interim.

It was clear that even in May, the Complainants were unsure as to the status of their loan application. The first Complainant stated in his complaint to this Office dated 10 August 2016 that *"On the 05/05/2016 I wrote to the loans officer, [staff member], informing her of the progress that was made and seeking clarification of our loan."*

While I have not found a basis for the Complainants to assume their loan application had been approved, it is also very clear, and indeed it has been admitted by the Provider, that there was a very unhelpful lack of communication on the part of the Provider. The Provider failed to meet with the Complainants in December 2015, after specifically inviting them to attend for a meeting. The Provider then failed to contact them within an hour when they did attend and the Provider's loan advisor was delayed in meeting with them despite saying that they would be contacted. The Provider then failed to contact the Complainants at all regarding their loan application.

The Provider's conduct is not in compliance with **Chapter 2 of the Consumer Protection Code - Common Rules for all Regulated Entities –** which provides that:

> *"A regulated entity must ensure that all information it provides to a consumer is clear and comprehensible, and that key items are brought to the attention of the consumer. The method of presentation must not disguise, diminish or obscure important information."*

The Provider has admitted from the outset of the complaint process that its customer service and communication was poor during December 2015.

I find that there was a lack of communication on the part of the Provider, which the Provider has admitted, and a failure to provide adequate customer service to the Complainants.

I am aware that, in its response letter of **29 March 2018** to this Office, the Provider offered the Complainants a sum of €5,000.00 as a goodwill gesture *"for the poor customer service that the Complainants received in relation to this matter."* I consider this to be a reasonable sum of compensation for the Provider's failings in customer service. In these circumstances, and on the basis that this sum of €5,000 remains available to the Complainants, I do not uphold the complaint.

Conclusion

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

GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

20 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.