



<u>Decision Ref:</u>	2019-0216
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Off-set Mortgage
<u>Conduct(s) complained of:</u>	Failure to provide correct information Misrepresentation (at point of sale or after)
<u>Outcome:</u>	Partially upheld

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

Background

This complaint relates to an application by the Complainant for mortgage approval from the Provider. The complaint specifically concerns an email sent by a representative of the Provider to the Complainant in relation to the Complainant's application for mortgage approval.

The Complainant's Case

The Complainant attended a branch of the Provider in **September 2016** to make an application for a mortgage. Following this attendance, the Complainant received a letter dated **21 September 2016** confirming approval in principle for a mortgage. This approval in principle was subject to four conditions, the fourth being that the Complainant must redeem an existing mortgage on another property owned by her, held with another provider on or before the drawdown of the proposed mortgage from the Provider.

The Complainant states that she then contacted the Provider's representative, with whom she had dealt at the branch, by email with a view to obtaining mortgage approval with revised terms, removing the condition that she redeem the existing mortgage with the other provider. The Complainant states that she was advised that the Provider would not agree to her request and that the Provider would lend to her only if her existing property was sold.

The Complainant has submitted an email she received from the representative of the Provider, dated **27 September 2016**, declining the Complainant's request, in which the representative stated:

"I can assure you that all banks will be the same. If you apply with [existing mortgage], they will change your existing property to Buy to Let Property Rate and as result increase your rate.

Please note that the API letter is valid for 6 months and if you wish to take mortgage with [Provider], I will be more than happy to help you."

The Complainant contends that this advice led her not to pursue alternative sources of mortgage finance with other providers, as she placed reliance on this email from the representative of the Provider. She contends that this email constituted advice and that this advice was misleading.

The Complainant further states that the Provider has breached its own general principles whereby its employees must not recklessly, negligently or deliberately mislead a customer to the real or perceived advantages or disadvantages of any product or service. In essence the Complainant contends that the motivation behind this misleading advice was to induce the Complainant to avail of mortgage services with the Provider as opposed to a rival provider.

The Complainant states that, because she was misled by the Provider's representative, this has meant that she has missed the opportunity to secure a mortgage from another provider at a time when she could have purchased the property. The Complainant submits that as a result of the Provider's actions, the opportunity to purchase a property is now out of her reach due to a dramatic increase in house prices since **August 2016**. She seeks compensation in the amount of €40,000/€50,000 calculated on her estimation that this is the amount property prices have risen since **August 2016**.

The Complainant accepts that on **8 February 2018** she cashed a cheque in the sum of €200 which was sent to her by letter dated **22 September 2017** from the Provider as a customer care award. She specifically states that she did not solicit this award.

The Provider's Case

The Provider admits that the Complainant received approval in principle for a mortgage with the Provider by letter dated **21 September 2016** and further admits that the contents of the email of **27 September 2016** are as set out in the extract above. However, the Provider contends that the Complainant was at all times free to make enquiries with and apply to other providers in relation to her mortgage and that there was no intention to mislead the Complainant from the Provider or its representative.

The Provider asserts that the comments made by its representative were made in an attempt to explain to the Complainant the reasoning behind the conditions of the approval in principal and to explain to her how her existing mortgage might be affected if a further

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loan was obtained with a third party provider, given the fact that her existing loan would not be considered to be in respect of her private dwelling home. The Provider states that this explanation arose in circumstances where the Complainant had repeatedly asked that the Provider reconsider the condition of the approval in principle that her existing loan be redeemed.

The Provider does not agree that the comments made by its representative were given as advice and asserts instead that the representative merely provided a statement as to what she believed to be fact. The Provider maintains that these comments were made in a genuine attempt to assist the Complainant and convey the rationale behind the approval in principle and the refusal to reconsider the terms of the approval in principle by explaining what the representative believed was standard practice across financial institutions.

The Provider asserts that the representative fully believed that she was providing the Complainant with information which was relevant considering the particular circumstances of the Complainant's application and in this respect the Provider submits that it is compliant with its obligations under Clause 2.2 of the Consumer Protection Code 2012 to *"act with due skill, care and diligence in the best interests of its customers"*.

The Provider also points to the fact that in the emails, the subject of this complaint, there was no discussion of the advantages or disadvantages of any product or service and again stresses that the representative believed that she was giving important, accurate information relevant to the Complainant's application and queries regarding the application. The Provider submits therefore that it is not in breach of Clause 2.3 of the Consumer Protection Code 2012 which obliges the Provider not to *"recklessly, negligently or deliberately mislead a customer as to the real or perceived advantages or disadvantages of any product or service"*. Similarly, the Provider states that it is not in breach of Clause 4.1 of the Consumer Protection Code 2012 which states that *"a regulated entity must ensure that all information it provides to a consumer is clear, accurate, up to date, and written in plain English. Key Information must be brought to the attention of the consumer. The method of presentation must not disguise, diminish or obscure important information."*

The Provider has furnished significant detail in relation to its training and internal communications process to support its position that it, *"has and employs effectively the resources, policies and procedures, systems and control checks, including compliance checks, and staff training that are necessary for compliance with this Code"* pursuant to Clause 2.4 of the Consumer Protection Code 2012.

The Provider also points out that the Complainant did not proceed with the mortgage with the Provider and points out that the Provider has no knowledge of, or influence over, house prices in general.

Finally, the Provider does accept that the comments made by its representative were not in line with the general practice of the Provider and further accepts that the representative should not have expressed a personal opinion.

The Provider states that it offered a customer care award in the form of a cheque in the sum of €200 to the Complainant as it was accepted that the comments made by its representative to the Complainant were not in line with the standard practice of the Provider. This cheque was issued by the Provider to the Complainant on **22 September 2017** and was cashed on **8 February 2018**.

The Complaints for Adjudication

The complaint for adjudication is that the Provider's representative gave the Complainant misleading advice regarding the requirements and lending policies of other providers by email of **27 September 2016**, and that the Complainant was misled by this advice and relied on this advice to her detriment, preventing her from being in a position to purchase a property for which she seeks compensation in the amount of €40,000/50,000.

Decision

During the investigation of this complaint by this Office, the Provider was requested to supply its written response to the complaint and to supply all relevant documents and information. The Provider responded in writing to the complaint and supplied a number of items in evidence. The Complainant was given the opportunity to see the Provider's response and the evidence supplied by the Provider. A full exchange of documentation and evidence took place between the parties.

In arriving at my Legally Binding Decision I have carefully considered the evidence and submissions put forward by the parties to the complaint.

Having reviewed and considered the submissions made by the parties to this complaint, I am satisfied that the submissions and evidence furnished did not disclose a conflict of fact such as would require the holding of an Oral Hearing to resolve any such conflict. I am also satisfied that the submissions and evidence furnished were sufficient to enable a Legally Binding Decision to be made in this complaint without the necessity for holding an Oral Hearing.

A Preliminary Decision was issued to the parties on **10 June 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, within the period permitted, taking into account all of the evidence and submissions provided, my final determination is set out below.

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Having carefully considered the email in question, and having regard to the fact that it was in response to two requests by email on 22 September 2016 from the Complainant to reconsider the terms of the approval, I accept that the advice given by the representative was not an attempt to mislead the Complainant. Rather, I accept that the advice was a genuine attempt, made by the Provider's representative, to explain to the Complainant the reasoning behind the conditions of the approval in principal and to explain to her how her existing mortgage might be affected if a further loan was obtained with the rival provider given the fact that her existing loan would not be considered her private dwelling home.

I note that Provider does not agree with the Complainant's submission that the comments made by its representative were given as advice. The Provider asserts that the representative merely provided a statement as to what she believed to be fact. However, the Provider accepts that the statement was not in line with the general practice of the Provider and accepts that the representative should not have expressed a personal opinion. Whether one uses the word "advice" or not in respect of the statement, and regardless of the motives of the Provider's representative in making the statement, taking into account the Provider's expertise in the area and given that the comments came in the form of an official communication from the Provider, it was reasonable to expect that the Complainant would attach some weight to the statement. I accept that it was not in line with the Provider's standard practice and I find no evidence to support the contention that the Provider gave this advice with the intention of attracting the Complainant's business at the expense of other providers.

While I accept that it was reasonable for the Complainant to attach some weight to the statement and to place a level of reliance on it, the Complainant, who is a solicitor, was at all times free to carry out her own investigations with other providers to test the veracity of the Provider's advice / statement in relation to rival providers' offerings. It was not reasonable to expect that the Complainant, in the process of seeking to purchase a property, would simply accept this statement from the Provider and place full reliance on it, causing her not to make enquiries with alternative providers for a sustained period.

Any increase in house prices since **August 2016** cannot be attributed to the Provider, nor can it be held responsible for any decision made by the Complainant not to investigate the offerings of other providers.

However, I find that it was inappropriate for a representative of the Provider to provide a personal opinion in the form of such a generalised statement to the Complainant, by way of official email correspondence from the Provider.

In respect of the Consumer Protection Code 2012, while I accept that that the Provider's representative believed that she was providing the Complainant with information which was relevant considering the particular circumstances of the Complainant's application, the statement she made was generalised and constituted a failure to comply with the Provider's obligations under Clause 2.2 of the Consumer Protection Code 2012 to "*act with due skill, care and diligence in the best interests of its customers*".

I note in its Final Response letter to the Complainant dated **18 September 2017** the Provider stated, *"We acknowledge the correspondence issued to you by e-mail on 27th September 2016 from the [branch] indicated that other financial institutions may also require you to redeem the [third party] mortgage. The e-mail also commented that the [third party] may alter the rate applicable to your [third party] mortgage should you retain it. Such comments were not authorised and we wish to re-iterate that it is not [the Provider's] practice to comment on another lender's credit policy and indeed we would not be aware of such material. However we also re-iterate that the staff member concerned was trying to explain how your existing mortgage might be affected if you obtained a further loan with your existing lender on a new property that was to be your PDH."*

I do not accept that this accurately reflects the content of the e-mail at the centre of this dispute. The Final Response Letter deploys words and phrases including, 'indicate', 'may also require', 'may alter', whereas the e-mail in question deployed words and phrases including, 'I can assure you', 'they will change', 'and as a result, increase your rate.' I believe the Provider's Final Response Letter should have more accurately reflected the language of the e-mail the Complainant was complaining about.

I note that a customer care award of €200, unsolicited, was made by the Provider to the Complainant in recognition that the comments made by the representative of the Provider to the Complainant were not in line with the standard practice of the Provider on **22 September 2017** and I note that the Complainant cashed this on **8 February 2018**.

However, in light of the entirety of the foregoing, and in particular the acceptance by the Provider that the statement made by the representative to the Complainant was not in line with the standard practice of the Provider and my finding that this was inappropriate and in breach of Clause 2.2 of the CPC, I am of the view that €200 is insufficient compensation for this failing on the part of the Provider.

I partially uphold the complaint and direct the Provider to pay the sum of €800 to the Complainant.

Conclusion

- My Decision pursuant to **Section 60(1)(c)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is partially upheld, on the grounds prescribed in **Section 60(2)(e) and (g)**
- 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 €800, 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.

GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

11 July 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.