



<b><u>Decision Ref:</u></b>	2019-0293
<b><u>Sector:</u></b>	Banking
<b><u>Product / Service:</u></b>	Mortgage
<b><u>Conduct(s) complained of:</u></b>	Maladministration (mortgage) Dissatisfaction with customer service Fees & charges applied (mortgage)
<b><u>Outcome:</u></b>	Rejected

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

**Background**

The Complainants were the owners of an apartment purchased with the assistance of a loan facility provided by the Provider. The Complainants wished to purchase a new property and applied for the Provider's tracker mortgage mover facility. A loan facility was ultimately granted to the Complainants by the Provider. The Complainants are dissatisfied with the manner in which their application was handled by the Provider.

**The Complainants' Case**

The Complainants state that they approached the Provider in **November 2015** to ascertain their eligibility for a mortgage as they wished to purchase a house. They state that they had approximately €280,000 outstanding on their current mortgage drawn down in 2006, which was in negative equity.

The Complainants state that they were told by the Provider that if they sold their apartment for approximately €200,000, and taking into consideration their current savings, with a mortgage top-up they could purchase a house, in principle, for €300,000.

The Complainants state that in **December 2015** they received an offer on their apartment of €195,000 and at the same time found a house they wished to purchase which was on sale

for €285,000. The Complainants state that they accepted the offer on their apartment and their offer for the house was also accepted and deposits were paid.

The Complainants state that after much deliberation by the Provider and a request for extra documentation, they received word from the Provider **in mid-January, 2016** that its credit department was happy with their application. The Complainants state that it took longer than expected to submit the deeds to their apartment to the buyer.

The Complainants state that before the Letter of Offer was issued, they were told by the Provider that it would be possible to get a top-up on their mortgage. On the date on which the Complainants were due a response from the Provider, the Complainants state that at 5pm the Provider contacted the Second Complainant by telephone and informed her that their mortgage application was not successful and that they could not have the top-up as promised.

The Complainants state that the mortgage on their apartment was solely in the First Complainant's name however, while the new mortgage would be in both Complainants' names, the Provider chose to contact the Second Complainant. The Complainants state that they *"were up the walls"* with calls from the purchasers of their apartment and the vendors of their prospective house looking for answers. The Second Complainant states that the Provider contacted her while she was at work and that this was not the best decision as she was emotionally drained from waiting for a response to the application.

The Complainants state that the Provider suggested that the Complainants reduce the top-up amount and try to make up the shortfall with personal funds. The Complainants state that they had put all their savings on the table from the beginning of the application process. The Complainants states that the Provider made remarks about the First Named Complainant's business cash flow in that the Provider's representative stated on the phone to the Second Named Complainant *"sure in your husband's line of work as a [trade] surely he would have money lying around"*. The Complainants submit that such a remark is unprofessional.

The Complainants state that two further applications were submitted with lower top-up values each time and both were rejected by the Provider's credit department. The Complainants state that after a stressful time back and forth with the Provider there was no approval for any sort of top-up. The Complainants state that the Provider informed them that they met its rules on lending but they did not meet the new Central Bank rules which were implemented in 2015 in respect of transfer mortgages and top-ups. The Complaints state they were told that their current mortgage figure exceeded 3.5 times their joint salary at present. The Complainants accept this but point out that in 2006 banks were throwing money at them and that the First Complainant was offered an additional €50,000 when drawing down his mortgage in 2006. In light of this, the Complainants state their position in the following terms:

*"We also understand that new rules had come into play but our question was why we weren't evaluated on this the very first day when we went in if the rules were launched in 2015 and when all the figures were put into the spreadsheet. Maybe then*

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*we would not have been given such a high value to shop with that put us under so much pressure and stress.”*

The Complainants state that having been refused a top-up they were told that if they wanted the purchase of the house to go through, they would have to come up with the value of the difference themselves. They state that they were asked if they could get a loan from their family. The Complainants state that they had to go to the First Complainant's elderly mother and the Second Complainant's parents who look after a special needs child and ask them for a loan. They state that they were over a barrel and had estate agents looking for answers.

The Complainants further state that a loan offer was sent to their solicitor on **19 February 2016** but that there were delays and it was **May 2016** before they signed the mortgage.

The Complainants state that during the process the Provider's representative whom they had been dealing with was promoted and a new representative assumed his role. The Complainants state that this was like starting from scratch as the new representative could not get their head around matters.

The Complainants also identify issues regarding the delay in receiving mortgage redemption figures from the Provider and errors in calculating these figures. They state that they requested the final redemption figure from the Provider as there was going to be a shortfall figure which they would have to cover, however, the Provider advised them that it was their solicitor who would furnish them with this figure. The Complainants also state that it took many emails and calls from both the Complainants and their solicitor to obtain the redemption figure, which was furnished by the Provider to their solicitor on 4 May 2016. A mortgage payment was scheduled to come out of their account on 6 May 2016 and therefore the redemption figure was off. The Complainants cannot understand why the Provider could not have waited until this payment was made and take this into account when providing the redemption figure as the figure was then off because of this. They also state that a revised figure was requested by their solicitor and they were told that this may take a few weeks. Ultimately, the Complainants state that they had to come up with the extra amount to cover the redemption figure, as well having the mortgage payment coming out of their account, and then seek a refund of the overpayment in the redemption figure and they state that as they were already pushed to their limit this pushed them beyond their limits financially. They eventually received the refund of the overpayment, less interest which they were charged, which they do not understand why they were charged this as it had been already covered in the other payment.

The Complainants state that they were given false promises by the Provider. They state that the Provider put them through unnecessary strain and stress and this has impacted on their personal, family and work life. They state that something needs to be done to ensure structure, honesty and communication between the Provider and the borrower.

In a further submission made by the Complainants, the Complainants state that as they were processing a negative equity mortgage transfer application, they should not have come under the Central Bank rules, rather the rules of the mortgage lending facility to which their

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application was made. The Complainants state they were treated unfairly in this regard and question why they did not come within the *exception category*.

With respect of the valuation reports, the Complainants state that they were not aware that valuation reports had an expiry and that this had to be done at their own cost. In further submissions, the Complainants take issue with conditions 7 and 21 of the Provider's terms and conditions regarding valuations.

The Complainants also take issue with the lack of call recording by the Provider and submit that these calls should have taken place on a recorded landline.

The Complainants also query why the Sight of Original Documentation Declaration was not dated and why correspondence was sent by the Provider to the address of their insured property rather than their risk address.

### **The Provider's Case**

In its submissions to this Office the Provider has responded to each element of the Complainants' complaint under specific headings.

#### ***Accountable Trust Receipt took longer than expected***

On **30 December 2015**, the Provider states it received a letter from the Complainants' solicitor dated **22 December 2015** requesting title deeds on Accountable Trust Receipt (ATR). The Provider states that it issued correspondence to the Complainants' solicitor dated **30 December 2015** advising that the ATR form needed to be completed.

On **11 January 2016**, the Provider states that it received correspondence from the Complainants' solicitors dated **6 January 2016** containing the completed form. The Provider states that in order to issue deeds on ATR it is required to ask customers certain questions. It states that a message was sent to the Complainants on **28 January 2018** requesting that they make contact with the Provider. The Provider states that it spoke to one of the Complainants on **1 February 2016** and the relevant questions were answered.

The Provider states that the deeds were issued on ATR on **10 February 2016**.

#### ***Advice surrounding availability of top-up and making contact with the Second Complainant***

The Provider states that as outlined in its letter dated **9 June 2016**, the purpose of the initial meeting with the Complainants was to provide an indication of the level of lending facility it would be in a position to offer the Complainants based on the unsubstantiated information provided. The Provider states that this does not constitute loan approval and is not legally binding. The Provider states that the level of income outlined by the Complainants at the

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meeting was not supported by their accountant. The Provider states that the Complainants' loan application was revised to meet its lending criteria.

The Provider states that it contacted the Second Complainant to advise of the outcome of the application as she was a named party to the application.

***Advice regarding lesser top-up amount and Provider's remarks regarding First Respondent***

The Provider states that, as outlined in its letter dated **9 June 2016** to the Complainants, its representative stated to the Complainants that he did not make reference to the cashflow of the First Complainant's business as a [trade] as referred to by the Complainants. The Provider states that its representative advised that, in order to progress the Complainant's application, it required greater cash input and advised the Complainants of a numbers of ways that this could be achieved.

***The Provider submitted applications for lesser amounts but these were declined***

The Provider states that it operates within the guidelines of the Central Bank. When assessing mortgage applications, it will approve or decline an application within the Central Bank guidelines and based on the Provider's current lending policy.

***Rejection of top-up; Complainants failed to meet Central Bank rules; and Complainants' query regarding the application of the Central Bank rules***

The Provider states that its rules do not differ from the Central Bank rules and it refutes the Complainants argument that they were advised that they met the Provider's lending criteria but not those of the Central Bank.

The Provider states that the Central Bank regulations on mortgage lending announced on **27 January 2015** state: "PDH [Private Dwelling Home] mortgage loans are subject to a limit of 3.5 times loan to gross income." The Provider states that approval in principle provides an indication of the lending facility the Provider would be in a position to offer based on the information provided at that point in time. The Provider states that the level of income outlined by the Complainants at the initial meeting was unsupported and their application was revised to meet the Provider's lending criteria.

***Family Loan***

The Provider states that its representative did advise the Complainants that in order to progress their application a greater cash input was required and it advised the Complainants a number of ways this could be achieved. The Provider submits that it did not tell the Complainants to get a loan from their parents to make up the shortfall, but that it advised the Complainants of the Provider's policy as regards parental loans.

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### ***Delay in issuing funds***

The Provider states that there was no delay in issuing funds. The Provider states that a letter of approval was issued on **22 February 2016**. On **1 April 2016**, the Provider received correspondence from the Complainants' solicitor requesting redemption figures for the apartment mortgage and these issued on **4 April 2016**. A completed Direct Debit mandate was received on **6 April 2016**.

The Provider states that it received an email from the Complainants on **7 April 2016** stating that the purchaser of their apartment had raised further queries which was delaying matters and sought assistance from the Provider to get things moving.

On **12 April 2016** the Provider issued correspondence to the Complainants' solicitor requesting confirmation of the Shortfall Agreement, the signed unconditional contracts and the gross proceeds of sale. The Provider states that their correspondence advised that on receipt of these items it would provide "a *vacate of the mortgage*" in respect of the apartment. The Provider states that it emailed the Complainants informing them of this letter on **13 April 2016**. A query was also raised regarding the Complainants' arrangements for life and home insurance.

The Provider states that on **15 April 2016** it issued an amended letter of loan offer with an interest rate of 2.10% following a reduction in the ECB rate.

The Provider states that the Complainants advised it of a proposed closing date of **6 May 2016**. The Provider advised the Complainants of the outstanding documentation that was required from the Complainants and their solicitors. The Provider states that the Complainants were due to meet their solicitor the following week to complete the required paperwork. The Provider states that it emailed the Complainants on **28 April 2016** to query whether they had a closing date and if the relevant documentation had been completed. The Provider states that the Complainants responded the same day and advised of a provisional closing date of **9/10 May 2016**.

The Provider states that it received a signed acceptance of loan offer dated **29 April 2016** together with the items it previously requested. The Provider states that it sent correspondence to the Complainants' solicitor on **4 May 2016** requesting confirmation of conditions 15 and 26 of the loan offer. It states that a copy of the home insurance schedule dated **3 May 2016** and a further valuation dated **4 May 2016** were subsequently received.

The Provider states that it received a request for up-to-date redemption figures on **4 May 2016** which were issued to the Complainants on **4 May 2016** and further figures were provided on **9 May 2016**. A copy of the Complainants life cover was received on **6 May 2016**. The Provider states that the loan cheque issued on **13 May 2016**.



***Broken Promises; Provider's failure to provide facts and figures; and the added stress of paying a loan in addition to their mortgage***

The Provider states that it was unaware of the additional borrowings taken out by the Complainants to top up the mortgage as these were not included in the mortgage application. The Provider repeats its submission outlined above regarding the approval in principle letter in respect of this point.

***The Provider's requests for information slowed the process and it should have a checklist in place***

The Provider states that it has a process in place whereby the required documentation is requested at the application stage. The Provider states that the queries raised in respect of the Complainants arose regarding certain aspects of their application. These related to confirmation of self-employed income, confirmation of rental income and confirmation of balance of funds. The Provider states these were not evident from the documents provided and were therefore requested by the Provider.

***Change in personnel handling the Complainants' application***

The Provider states that its records indicate that it kept the Complainants apprised of the progress of their application and liaised with them and their solicitor regarding outstanding items at all times. The Provider states that its representative also assisted the Complainants when the purchaser of their apartment raised a query which threatened to delay the matters.

***Issues surrounding redemption figures***

The Provider states that on **1 April 2016** it received correspondence dated **31 March 2016** from the Complainants' solicitors requesting redemption figures for the apartment mortgage. It states that redemption figures issued under cover of letter dated **4 April 2016** which set out that the figures were valid for 20 days and were subject to a daily interest rate. The Provider states that it received a further request by letter dated **3 May 2016**. It states that redemption figures were issued on **4 May 2016** and further figures were issued on **9 May 2016**. It states that the daily accrual of interest was €8.34.

The Provider states that proceeds of sale of the apartment were lodged on **13 May 2016**. It states a tax relief at source adjustment of €15.38 was processed on **23 May 2016**, the account was redeemed and a refund of €911.78 was issued. The Provider states that its letter of **9 June 2016** provided a breakdown of these figures.

The Provider states that a cheque in the amount of €280,704.51 was issued to the Complainants solicitor on **13 May 2016**. The sum of €278,494.12 was received to redeem the apartment mortgage. It states the difference of €2,210.39 was issued by bank draft to the Complainants solicitor on **13 May 2016**.

The Provider states that the redemption figures issued to the Complainants' solicitor on **9 May 2016** denoted a figure of €278,535.88 with a daily interest figure of €8.34. It states that on receipt of the solicitor's cheque on **13 May 2016** the redemption figure had increased by €33.36, which consists of 4 days' interest.

### ***Negative equity mortgage and the application of the Central Bank rules***

The Provider states that its rules do not differ from the regulations of the Central Bank. The Provider is regulated by the Central Bank. The Provider states that the Central Bank's regulations on residential mortgage lending advises: Loan to Value (LTV) for Principle Dwelling Houses (PDH) – Housing loan for borrowers in negative equity who wish to obtain a mortgage for a new property are not within the scope of the LTV limits. However, Loan to Income (LTI) for PDH mortgages states PDH mortgage loans are subject to a 3.5 times loan to gross income.

The Provider states that while the Central Bank regulations regarding LTV do not apply to customers in negative equity who wish to obtain a mortgage for a new property the Central Bank regulations regarding LTI do apply, therefore, the Central Bank regulations applied to the Complainants' application.

### ***Complainants were required to carry out a further valuation at their own cost as original valuation expired***

The Provider refers to the Terms and Conditions issued to the Complainants on **22 February 2016**, in particular condition 7 and condition 21. These conditions deal with valuation reports. The Provider states that by signing the Acceptance of Loan Offer the Complainants confirmed that their solicitor had fully explained the terms and conditions to them.

The Provider states that the initial valuation report dated **12 February 2016** expired on **12 April 2016** in accordance with the terms and conditions signed by the Complainants. The Provider states that a second valuation report was required on **4 May 2016** to enable the loan to issue.

### ***Call recording***

The Provider states that calls are only recorded when they are made to its online service and to its departments. It states that telephone calls are not recorded in branches.



The Provider states that the calls which took place between its representative and the Complainants were from the representative's mobile phone and it was not in a position to record these calls.

### ***Dating of documents and amending complainants' address***

The Provider could not offer an explanation for a date not being recorded on the Sight of Original Documentation Declaration but that it was noted on their system on **14 January 2016**.

With respect to the sending of correspondence to the wrong address the Provider states that it received correspondence on **9 April 2018** from the First Complainant requesting that the address be amended. The Provider states that it responded by letter dated **10 April 2018** advising that the signatures of both Complainants were required to amend the address. The Provider states that as at **9 May 2018** it was still awaiting a response from the Complainants in respect of this.

### **The Complaint for Adjudication**

The complaint for adjudication is that the Provider incorrectly managed the Complainant's mortgage loan application from when they first visited one of its branches in 2015, to enquire about a mortgage, up to drawdown of the mortgage.

### **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 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 15 July 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 Complainants made a further submission under cover of their representative's e-mail to this Office dated 6 August 2019, a copy of which was transmitted to the Provider for its consideration.

The Provider confirmed to this Office under cover of its letter dated 14 August 2019 that it had no further comment to make.

Following consideration of the Complainants' additional submission, together with all of the evidence submitted by the parties, I set out below my final determination.

While it is not necessary to refer to every document, I will now set out certain aspects of the documentation which I consider most relevant to this complaint.

### **Home Movers' Brochure**

The Provider's home movers' brochure has been provided in evidence. I note the section which deals specifically with the tracker mortgage mover facility at page 18 sets out the application process:

*"First, meet with a Mortgage Advisor in your local ... branch. ... Your Mortgage Advisor will explain to you how the product works and give you a better idea of how much you can borrow and at what mortgage rate. ...*

*If you are satisfied that the [tracker mortgage mover facility] is for you, you should meet with you Mortgage Adviser again and provide the following:*

- *Your application documents (e.g. P60 and two of your last three payslips, a salary certificate and six months personal bank account statements)*
- *...*
- *A full valuation on your existing property, at your own cost, completed by an independent valuer from [the Provider's] Valuation Panel ...*

*As you know, your mortgage application is subject to underwriting criteria. If it is approved, we will provide you with an Approval in Principle letter ..."*

The next section at page 19 deals with the Letter of Approval:

*“The next thing to do is to get your formal Letter of Approval.*

...

*To secure a Letter of Approval, an independent valuation needs to be carried out on the new property ...*

*If you are in Negative Equity, you must do the following:*

- a) ...
- b) *In order for us to proceed with your application, you will need to confirm in writing to [the Provider], through your solicitor that you have entered into a contract for the sale of your existing property and purchase of your new property.*
- c) *You will be required to sign and return your Shortfall Repayment Agreement ... with your Letter of Approval.”*

Finally, *Important Points to Note for Both Products* are outlined on page 23:

*“... We recommend that you seek independent legal, financial and tax advice before proceeding with this mortgage.*

- ...
- *The Letter of Approval, which sets out how much you can borrow for purchasing your new property, is subject to change as it will be based on your financial circumstances at the time of purchase of your new property.*
- ...
- *Before drawdown of your new mortgage, adequate life cover will have to be in place. We recommend that you speak to your financial advisor about amending or taking out new insurance policies. ...*

### **Mortgage Application Form**

The Complainants completed and signed a mortgage application form dated **22 October 2015**. The signature and declaration section states:

*“... I/We note that if I/We are approved by [the Provider] for a loan that at any time before the completion of the mortgage transaction [the Provider] has the right to withdraw or vary the approval subject to applicable law ...”*

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### **Approval in Principle**

Two letters of approval in principle have been submitted; the first is dated **15 January 2016** and the second dated **19 February 2016**. These letters appear to be identical except for the section “*Pre Letter of Approval conditions*”. The letters state as follows:

*“I am delighted to approve you, in principle, for the following:*

...

*This is an approval ‘in principle’ only, it is **not legally binding** so you should not rely on it to enter into contracts or buy properties at auction.*

...

#### ***Property Valuation***

*If you decide to apply for Loan Approval we will need a property valuation ...*

#### ***Valuation Fee***

*You must pay a valuation report fee. ...*

*[The Provider] may require you, at your expense, to provide a further valuation report from [the Provider’s] approved valuer ... where, at the date of drawdown of the Loan, the valuation report provided to [the Provider] is more than 6 months old ...*

#### ***Letter of Approval***

*... All applicants to the mortgage loan and their solicitor will need to fully read through the Letter of Approval and conditions. ...”*

### **Letter of Approval**

The Provider sent the Complainants and their solicitor the first letter of approval on **19 February 2016** with the final amended letter of approval being sent on **15 April 2016**. The terms and conditions of both are effectively the same. The Special Conditions set out a number of matters that were to be completed prior to drawdown regarding insurance, unconditional contracts of purchase and sale, receipt of proceeds of sale, and completed Shortfall Repayment Agreement. Condition 7 deals with valuation reports and stipulates that any such report is at the applicant’s expense and a further report may be ordered where the initial valuation report is more than 3 months old. Condition 21 deals with references to valuations reports when the period of validity is reduced to 2 months.

The Acceptance of Loan Offer was signed by both Complainants and dated **29 April 2016**.

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Paragraph 4 of the acceptance states:

*"4. My / Our Solicitor has fully explained the said terms and conditions to me/us."*

### **Correspondence**

In an email dated **7 January 2016**, from the Provider's representative to the Provider's credit appeals section it is stated:

*"Please see responses from the branch highlighted in red below.*

*Thank you for resubmitting this case. As discussed, we do need to average the income over 3 years, regardless of when [the First Complainant] started in the first year. I acknowledge your point that he only traded for a short period in 2012 however Policy does state that he needs to have 3 years employment for Self Employed income. We do not accept projected earnings.*

*... the income figure was calculated using 2013 and 2014's drawing. The accountants cert also confirms that earnings for 2015 will be circa €35k. However, I have not taken these projected earnings into account.*

*The customer only commenced self-employment mid 2012 and I feel it is unfair to take this income into consideration when averaging his income.*

*As the rental income has substantially increased, from €950 to €1200, this would need to be evidenced for 6 months. If everything else on the case was strong, we could look at 4 months if we could see the rent coming into the account however I do have the concerns as outlined in the original note re: income, PRA ..., missing documents etc. My suggestion here is for customer to reapply when increased rental commitment has been established, and for a reduced loan amount to ensure case meets MDIR. Regards, [Provider's credit appeals agent]*

*The rental income on the new property is €1200 and while I acknowledge that we must have evidence for 6 months the applicants have confirmation by way of the signed rental agreement from the tenants the first month's rent was lodged to the clients ... account on 15<sup>th</sup> December. The January rental payment is also due next week.*

*Note comments above on MDIR, however this is only outside policy when we include the earnings for 2012. Nets sheet imaged shows an income of €30417 for [the First Complainant].*

*In addition to the above, the applicants have no short term debt. ..."*

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In an email dated **9 February 2016**, the Second Complainant wrote to the Provider regarding the delay surrounding the deeds of the apartment:

*"... Deeds were supposed to be released on 1<sup>st</sup> Feb to solicitors but the solicitor rang today and have still not received the deeds ... They are ready to go with everything else just waiting on the deeds and it is holding everything up"*

A further email was sent by the Second Complainants regarding issues raised by the purchasers of the apartment on **7 April 2016**.

In an email dated **13 April 2016** from the Provider's representative, who had taken over the handling of the Complainants' account, to the Second Complainant, she informed the Second Complainant that she was looking after the mortgage application. In a further email of the same date, this representative stated among other things:

*"Sorry for the questions but when you haven't dealt with a case from the start ... you know yourself."*

In a letter dated **9 June 2016**, the Provider wrote to the First Complainant addressing a number of issues raised with respect to the mortgage application. In particular, I noted the following acknowledgement:

*"... I understand there was delay receiving a decision on your mortgage application. I sincerely regret any inconvenience that may have caused ..."*

### **Consumer Protection Code**

In considering this complaint I have had regard to the provisions of the Consumer Protection Code 2012 (the **Code**). I will now set out some of the relevant provisions.

#### ***"GENERAL PRINCIPLES***

*A regulated entity must ensure that in all its dealings with customers and within the context of its authorisation it:*

*2.1 acts honestly, fairly and professionally in the best interests of its customers and the integrity of the market;*

*2.2 acts with due skill, care and diligence in the best interests of its customers;*

*2.3 does not recklessly, negligently or deliberately mislead a customer as to the real or perceived advantages or disadvantages of any product or service;*



2.4 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;

2.5 seeks from its customers information relevant to the product or service requested;  
...

2.12 complies with the letter and spirit of this Code.

## **PROVISION OF INFORMATION**

### **GENERAL REQUIREMENTS**

4.4 A regulated entity must ensure that the font size used in all printed information provided to consumers is: a) clearly legible, and b) appropriate to the type of document and the information contained therein.

...

### **INFORMATION ABOUT PRODUCTS**

4.21 Prior to offering, recommending, arranging or providing a product, a regulated entity must provide information, on paper or on another durable medium, to the consumer about the main features and restrictions of the product to assist the consumer in understanding the product. ...

### **KNOWING THE CONSUMER AND SUITABILITY**

...

#### **Mortgages**

5.6 Prior to providing a mortgage to a personal consumer, a mortgage lender must either:

- a) have had sight of all original supporting documentation evidencing the personal consumer's identity and ability to repay; or
- b) receive from a mortgage intermediary a signed declaration that such mortgage intermediary has had sight of all original supporting documentation evidencing the personal consumer's identity and ability to repay.

A declaration signed by the personal consumer, (or his or her representative), certifying income and/or ability to repay is not sufficient evidence for these purposes.

*5.7 A regulated entity must assess the reasonableness of the information contained in the documentation submitted by a personal consumer in support of a mortgage application and take all reasonable steps to ensure that the documentation submitted is legitimate and authentic.*

*5.8 A regulated entity must ensure that it has had sight of an original valuation report for the property which will act as security for the mortgage, prior to providing a mortgage.*

## **SUITABILITY**

### **Assessing affordability of credit**

*5.9 Prior to offering, recommending, arranging or providing a credit product to a personal consumer, a lender must carry out an assessment of affordability to ascertain the personal consumer's likely ability to repay the debt, over the duration of the agreement.*

...

*5.13 A regulated entity must take account of the result of the affordability assessment when deciding whether a personal consumer is likely to be able to repay the debt for that amount and duration in the manner required under the credit agreement.*

...

*5.15 A lender must carry out a further affordability and suitability assessment prior to advancing additional credit to a personal consumer, whether by way of a top-up on an existing loan or by a new agreement to provide credit.*

### **Assessing suitability**

*5.16 When assessing the suitability of a product or service for a consumer, the regulated entity must, at a minimum, consider and document whether, on the basis of the information gathered under Provision 5.1 and 5.3:*

- a) the product or service meets that consumer's needs and objectives;*
- b) the consumer:
  - i) is likely to be able to meet the financial commitment associated with the product on an ongoing basis;*
  - ii) is financially able to bear any risks attaching to the product or service;**

- c) *in the case of credit products, a personal consumer has the ability to repay the debt in the manner required under the credit agreement, on the basis of the outcome of the assessment of affordability; and,*
- d) *the product or service is consistent with the consumer's attitude to risk.*

*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. The following additional requirements apply:*

- a) where a regulated entity offers a selection of product options to the consumer, the product options contained in the selection must represent the most suitable from the range available from the regulated entity; and*
- b) where a regulated entity recommends a product to a consumer, the recommended product must be the most suitable product for that consumer.*

## **RECORDS AND COMPLIANCE**

### **RECORDS**

...

*11.7 A regulated entity must maintain complete and readily accessible records; however, a regulated entity is not required to keep records in a single location. ..."*

The Complainants, in their post Preliminary Decision submission dated 5 August 2019, state:

*"There is no need for you to apologise how drawn out this process has been. This is not your fault but the fault of an office that is not fit for purpose".*

I regret that the investigation of this complaint took as long as it did. However, I can state that the complaint was fully, impartially and professionally investigated.

The Complainants, in that same submission, advise that while they were partially the cause of some of the delays in relation to their dealings with the Provider initially, they suggest that this Office has not investigated the fact that the 'Provider's staff completely disregarded the CPC 2012'. To support this, they rely on the language they state was used by a member of the Provider's staff. I had in fact specifically referenced the CPC in my Preliminary Decision and considered the Provider's conduct in light of the relevant provisions. I also considered and commented on the recording of conversations and the handling of the Complainants' loan application by the Provider's staff.

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The Complainants, in the post Preliminary Decision also state that the manner in which they were spoken to was overlooked in my Preliminary Decision and that their main complaint has not been addressed.

I cannot accept this. Both my Preliminary Decision and this Legally Binding Decision state that *“The Complaint for adjudication is that the Provider incorrectly managed the Complainant’s mortgage loan application from when they first visited one of its branches in 2015, to enquire about a mortgage, up to drawdown of the mortgage.”* I have addressed these issues directly.

### **Analysis**

The Central Bank is charged with, amongst other things, the regulation of credit institutions. It sets the regulations for lending practices in this country. The Provider, as a credit institution, is obliged to comply with these regulations. A mortgage application form was completed by the Complainants dated **22 October 2015**. The Complainants state that they met with the Provider in **November 2015** with a view to ascertaining the amount they could potentially borrow as they wished to purchase a new house. As the Provider’s mortgage movers’ brochure outlines, the Complainants were in the initial stages of a mortgage application. The brochure further outlines the steps that must be followed by an individual when seeking to apply for a mortgage and provides information on each stage. The approval in principle letters issued in **January and February 2016**. These letters are drafted in clear and concise terms: they represent an approval of a loan in principle only. They do not constitute a legally enforceable loan offer. Additionally, these letters come with a further warning that the applicant should not rely on such letters to enter into legally binding contracts.

The Complainants accepted an offer for their apartment in **December 2016** and submitted a successful offer on a new house around the same time. I note that the Complainants entered into these transactions at a point in time where only an indication had been given to them by the Provider as to the amount they could potentially borrow. There was nothing to suggest that the Complainants would in fact get approval for a €300,000 mortgage. I also note the approval was subject to the Complainants providing evidence to support the income levels they had furnished to the Provider. The Complainants are dissatisfied with the Provider’s rejection of their applications, their inability get approval for a top-up and the subsequent need to obtain funds from alternative sources. It is at the Provider’s discretion to approve or reject a mortgage application and to offer a mortgage on the conditions it deems appropriate given a particular applicant’s circumstances. I note the Complainants’ comment on the practises of other financial institutions and the practices of financial institutions in the past, however, these are not relevant to this complaint.

The Complainants had applied for their mortgage and supplied the requested documentation. However, the Provider took the position, for the reasons outlined above, that the documentation supplied in this instance was not sufficient.

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Moreover, the initial meeting where indications were given to the Complainants regarding their borrowing potential was based on information supplied by the Complainants which they appear to have been unable to support later. In such an instance, the Complainants should have a level of understanding that the discussions which took place at the meeting were exploratory only and not could not be relied upon. The Complainants would have to follow the Provider's application process. The Complainants were applying to the Provider for a mortgage, therefore, they would be required to satisfy the Provider's and the Central Bank's lending criteria. While the Complainants were dissatisfied with the Provider's requests, I accept that the Provider was entitled to seek additional documentation from the Complainants. While the Complainants may have found these requests stressful, the stress they describe in their submission primarily appears to emanate from the contracts the Complainants entered into in **December 2016** and this was compounded by the difficulty they encountered in obtaining mortgage approval.

Furthermore, the evidence in this complaint indicates that the Provider was endeavouring to assist the Complainants in their mortgage application by reducing the top-up balance and suggesting alternative options. The fact that the Complainants were unhappy with the ultimate loan offer and that it varied from their initial meeting with the Provider does not mean the Provider acted inappropriately. The initial meeting, subsequent loan application and the letters discussed above, do not constitute an enforceable loan offer and are not legally binding. A reading of the documentation provided by the Provider to the Complainants makes this clear. The Complainants were also advised to obtain independent legal advice. The Complainants entered into the sale and purchase transactions at a point in time when they mortgage application was at a very early stage, not even an approval in principle had been given.

The Complainants have also taken issue with the lack of call recording on the part of the Provider. While it is unfortunate that calls were not recorded in this instance, I note the Provider's submissions that it does not record calls at branch level.

I also note that the certain conversations which took place between the Provider's representative and the Complainants were via mobile phone. The Provider is not obliged to record calls and there is nothing to suggest that the calls were in fact recorded despite the submissions of the Complainants.

While the Provider has acknowledged that there was delay on its part, this was not the only source of delay. Though replacement of the Provider's representative may have caused a certain level of disruption, I do not accept it caused the level of disruption and delay as described by the Complainants. There is evidence of delay from all parties involved in the process. I note that following the Provider's representative's promotion, the Second Complainant continued to address certain of her queries regarding her application to this individual rather than to his replacement. I note from email correspondence from the Second Complainant to the Provider in **April 2016** that there were also delays arising from queries being raised by the purchaser of the apartment.

In the Provider's submissions to this Office in response to the complaint I am aware that the Provider "*appreciates that there were some delays experienced with the initial application*" and has offered the Complainants a sum of €750.00 as a goodwill gesture. I consider this to be a reasonable sum of compensation for the inconvenience caused to the Complainants by certain aspects of the Provider's handling of their application as distinct from the other aspects of their complaint.

While the Complainants are dissatisfied with how their mortgage application was handled by the Provider and its representatives, I accept that the Provider was required to act within the confines of and in compliance with Central Bank regulations and I do not find that the conduct of the Provider was contrary to the Code.

For the reasons set out above, and on the basis that the Provider's offer of €750 remains available for acceptance by the Complainants, 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**

9 September 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.

