



<u>Decision Ref:</u>	2019-0347
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Variable Mortgage
<u>Conduct(s) complained of:</u>	Maladministration Delayed or inadequate communication
<u>Outcome:</u>	Upheld

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

Background

This complaint relates to suggested maladministration by the Provider including a suggested inordinate delay in processing the Complainant's mortgage application.

The Complainants Case

On **12 October 2015**, the Complainant contacted the Provider, a mortgage broker to seek information in relation to taking out a mortgage. She made preliminary enquiries but was not ready to formally apply at this time.

Almost 2 years later, in **August 2017**, the Complainant states that she had a meeting with a representative of the Provider, (Representative A), on the **30 August 2017** to make the formal application. The Complainant brought all the necessary paperwork, for applications to be made to several lenders as she hoped to "port" her existing tracker mortgage account to the new loan.

The Complainant says she was informed by Representative A, that she could borrow €192,000 based on her earnings and retain her tracker rate. The Complainant states that on **11 September 2017**, she was told by Representative A, that the mortgage had been approved. She was informed that there would be a delay in issuing a Certificate of Approval as the interest rate was being decided by the lender. In reliance on the Provider's

representative's confirmation as to the mortgage approval, the Complainant placed her property for sale.

On **27 November 2017**, the sale of the Complainant's apartment was agreed. The Complainant states that she was informed that in order to obtain mortgage approval, she would be required to have the sale agreed on her existing apartment.

On **19 December 2017**, the Complainant states that Representative A informed her that the mortgage approval certificate had issued for €192,000 with a 10% deposit exemption. The Complainant states that she was further assured by text message on **4 January 2018** that the certificate of approval was pending. Despite the representations made by Representative A, the Complainant never received the certificate because it seems that no application had been made to the lender for the approval. The Complainant continued to attempt to contact Representative A throughout **January 2018** and she was informed that the certificate was imminent.

The Complainant states that from **19 – 30 January 2018**, Representative A failed to return her telephone calls and e-mails promptly and often failed to return telephone calls and e-mails at all.

On **30 January 2018**, the Complainant contacted the sales director of the Provider (Representative B) expressing her concerns relating to the delay. Representative B confirmed that despite extensive discussions and negotiations with her lender, it appeared that no formal application had been made to it. Representative B appointed an associate director to handle matters from then for the Complainant.

The Complainant states that she wished to sell her current apartment, which was in positive equity, draw down the mortgage from the lender through the Provider and purchase a new property without incurring the expense of an interim rental payment. The Complainant states that due to the delay in processing the mortgage application, she lost out on a property in which she had expressed an interest in purchasing (to an auctioneer) on **30 January 2018**.

The complaint is that the Provider failed to administer the Complainant's mortgage application properly, misrepresented the status of the "application" to her and failed to process the application, to her detriment.

The Complainant is seeking compensation in the sum of €800 which represents the cost she incurred in the storage of items due to the delay in the house purchase, unplanned rental expenses of €6,250 and €5,000 for stress and upheaval.

The Provider's Case

The Provider states that a mortgage application was not submitted to the lender. The Provider further states that its database indicates that Representative A was still requesting

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information from the Complainant in relation to her application up to **16 January 2018**. The Provider states that it received this documentation on **17 January 2018**.

The Provider states that there is no evidence to suggest that Representative A gave the Complainant a verbal assurance in relation to her mortgage approval. The Provider states that its database shows that telephone calls were made by Representative A to the Complainant on **23 November 2017** and **6 December 2017** requesting further documentation. The Provider states that as the documentation collection process was ongoing, the Complainant knew that she did not have mortgage approval, when she placed her property on the market on **27 November 2017**.

The Provider notes that the text messages exchanged between Representative A and the Complainant led the Complainant to believe that she had mortgage approval however, it was the case that no approval document was issued. The Provider further states that the Complainant proceeded to sell her apartment, knowing that she had no loan approval in place.

The Provider states that it did not become aware of an issue until the Complainant contacted Representative B on **30 January 2018**.

The Provider acknowledges that there were considerable delays and that Representative A did not deal with this application in an acceptable manner. The Provider further accepts that the service the Complainant received from the Provider through Representative A was unsatisfactory. The Provider does not however accept that the Complainant had to place her apartment on the market.

The Provider states that the fact that Representative A led the Complainant to believe she was approved when she was not, is unacceptable.

The Provider apologises to the Complainant for the service she received and made a €500 gesture of goodwill towards her costs. In a letter from the Provider to the Complainant dated **24 April 2018** the Provider sets out

“You made a decision, in the absence of an Approval in Principle document and a Loan Offer document, to sell your property. Any costs which you had incurred as a result of that decision rest with you. However, as a gesture of good faith, we would like to make a contribution of €500 towards your costs...”

The Complaint for Adjudication

The complaint is that the Provider poorly administered the Complainant’s mortgage application, misrepresented the status of the “application” and failed to process the application, thereby causing her loss.

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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 17 September 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, the final determination of this office is set out below.

It is apparent to me that the Complainant was led to believe by the Provider that she had obtained mortgage approval from the lender.

The Complainant attended the Provider's offices on **30 August 2017** to make a formal application to several lenders as she hoped to "port" her tracker mortgage rate to the new loan.

The Complainant says that she was informed by Representative A on **11 September 2017** that her mortgage had been approved by the lender in the amount of €192,000 and that the Certificate of Approval was "*on its way*". The Complainant was further advised that the delay in issuing the approval certificate, was due to the interest rate being decided and that it would be with her shortly.

I note from the documentary evidence before me that a significant number of text messages were exchanged between the Complainant and Representative A. At all times Representative A led the Complainant to believe that he was working on her application and that he would furnish the Complainant with the date of when she could expect the relevant documentation. I note the following text messages sent by Representative A to the Complainant:-

"Wed, 27 Sep, 09.30

I am in meetings this morning, but I will have this resolved for you today; if I don't have the approval certificate, I will have a definite date of when we will..."

"Thu, 14 Dec, 10.39

...the approval certificate is imminent. I expected it earlier this week. I will be meeting the lender again early afternoon and will update you immediately. I know how keen you are to bring this to conclusion, as am I. And it will be concluded very soon"

"Tue, 19 Dec, 08.15

...I am in a couple of meetings throughout this morning, but will have a further update for you re the approval certificate by lunch time approx...."

"Wed, 17 Jan, 11.35

...as mentioned, all to be in order by end of week..."

On **30 January 2018**, the Complainant was informed by Representative B that no formal application had been made to the lender through the Provider. This is despite repeated assurances by Representative A that the Complainant's application was being processed. One can well understand that the Complainant was somewhat aghast at this news.

I note from the documentary evidence before me that the Provider states:-

"up until the 17 January she was still corresponding with us in relation to additional documentation which remained outstanding with regard to her loan application"

The documentation that the Provider is referring to appears to be bank statements that Representative A requested from the Complainant by email dated **16 January 2018**. The Complainant responded to Representative A's request on **16 January 2018** with the attached documentation.

I do not accept the Provider's position that the Complainant, in January 2017, was still submitting documentation in relation to her loan application and therefore ought to have known that the loan process had not been concluded given that she had been receiving assurances from Representative A about the status of her application.

I further note that the Provider has apologised to the Complainant and has offered the sum of €500 as a gesture of goodwill. However, given the delay, inconvenience, stress and worry caused to the Complainant by the Provider I do not believe that this amount is sufficient given the accepted falling short in its standards, in this particular matter. Whilst the Provider has advised that this was an isolated incident, it seems clear that notwithstanding the Provider's processes, its various team meetings, directors' oversight and compliance spot checking, the Complainant was clearly misled over a continuous and lengthy period in respect of what was, for her, a significant step in undertaking a re-mortgage, given her decision to sell the property and purchase another whilst seeking to "port" her tracker mortgage borrowing rate.

Whilst the Provider makes a valid argument, in my opinion, that the Complainant should have sought to hold up the sale of the property when the Certificate of Approval was not forthcoming, it is clear that, at that point, much of the damage had already been done in circumstances where the Complainant had relied on the repeated communications from Representative A to the effect that all was in train.

Conclusion

- My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is upheld on the grounds prescribed in **Section 60(2) (b) 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 €3,500, (instead of the figure of €500, which the Provider previously offered). This payment should be made 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.

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

9 October 2019

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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.

