



<u>Decision Ref:</u>	2019-0378
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Repayment Mortgage
<u>Conduct(s) complained of:</u>	Dissatisfaction with customer service
<u>Outcome:</u>	Rejected

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

Background

This complaint concerns the administration of the Complainant's mortgage loan application.

The Complainant's Case

The Complainant was a mortgage loan account holder with the Provider. This complaint relates to a mortgage loan application and the related advice the Complainant received regarding it.

In **June 2016**, prior to selling her house, the Complainant states that she went into a Provider branch to enquire about repaying the €78,000 mortgage loan on her existing account and getting another loan to build. She states that she was informed that she would have to re-apply. She subsequently called the Provider's dedicated mortgage team and was informed that due to a change in circumstances since her initial mortgage application (addition of two dependent children) she would be unable to get a loan.

The Complainant complained to the Provider and states that she was offered her tracker rate mortgage back for the cleared amount of €78,000. The Complainant had a car loan for €7,000 also and states that it was agreed with the Provider's representative that on drawdown of the mortgage loan sum she would clear this loan: *"they said that they would*

give me back my tracker mortgage for the amount that I had cleared (€78,000) and as I had a car loan balance of approx.. €7000 at that time, I was to clear that”.

The Complainant states that she also enquired about a possible €30,000 additional loan and attests that she was advised by the same Provider representative that she could secure this at a different rate.

In the months that followed the Complainant states that she called the Provider to enquire about her application and was informed it had received the application but had not processed it. The Complainant states that thereafter she received an email from the Provider requesting a valuation and having already submitted a valuation she was informed that this valuation would have to be funded by her. It was later confirmed that the Provider would pay for the valuation. The Complainant states that on **15 August 2016** she was informed that she was approved for the mortgage but would have to clear the car loan. She states that she informed them that as soon as she received the mortgage funds she would clear the car loan.

The Complainant states that she received conflicting advice with regards to using the proceeds of sale of the house to fund her new build. The Complainant states that the Provider returned her loan documents to her and that she remains unclear as to the status of the mortgage loan application, whether she will receive the mortgage funds and the conditions of any mortgage loan offer made by the Provider.

The complaint is that the mortgage loan application process was mismanaged by the Provider, in particular with respect to the lending decision timeframes and communications regarding the Complainant’s application.

The Complainant states that she simply wants to know if she is getting the mortgage, for how much, and when she can draw it down. She would like compensation.

The Provider's Case

The Provider rejects the complaint but acknowledges a delay in communications in **July 2017** and notes that at this time they offered to fund the required valuation at its own expense. The Provider states that the Complainant’s application has not been declined and that sanction in principle remained in place (up to **June 2018**) should the Complainant wish to proceed. The Provider states that the offer to refund the valuation remains open.

The Complaint for Adjudication

That the mortgage loan application process was mismanaged by the Provider, in particular with respect to the lending decision timeframes and communications regarding the Complainant’s application.

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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 21 August 2019, outlining my preliminary determination 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 parties made the following submissions:

1. Letter from the Provider to this Office dated 11 September 2019.
2. E-mail from the Complainant to this Office dated 16 September 2019.
3. E-mail from the Complainant to this Office dated 10 October 2019.
4. E-mail from the Complainant to this Office dated 14 October 2019.

Copies of these additional submission were exchanged between the parties.

Having considered these additional submissions and all of the submissions and evidence furnished to this Office, I set out below my final determination.

In **2016** the Complainant was in the process of selling her house, and wanted a loan to assist with building works on a new house. The idea was that she would clear her existing tracker mortgage from the proceeds of sale, and then obtain a new mortgage (retaining her tracker rate) to assist with the build.

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On **23 May 2016** the Complainant gave information over the phone to enquire about her eligibility for a tracker retention product, in order for the Complainant to retain her tracker rate on a new mortgage. The Complainant was advised that, when added to the allowances for a single person with 2 dependents, her monthly car loan repayments would bring her below the disposal income threshold for consideration for the tracker retention product. The Complainant was told that she would not be eligible for the tracker retention product based on the information she had provided for her outgoings.

The Complainant asked for this to be confirmed in writing, but was told that she would have to make an application in order to receive a formal refusal. The Complainant insisted that the fact that she could repay her previous mortgage meant she should be eligible for another one. She was advised that she could apply but on the basis of the information she had given she would not be eligible for the tracker retention product.

On **23 June 2016** the Complainant was advised in person that if she cleared her existing tracker rate mortgage she would be permitted to retain her tracker rate (plus a 1% margin in respect of the existing balance on the mortgage loan account). The Complainant was advised that it could be necessary for her to clear her existing personal loan in order to fall within the Provider's lending criteria. The balance of that loan at the time was just under €12,000. The Complainant was not happy with the requirement that this loan would have to be cleared. A statement from the Provider official who met with the Complainant that day states that no assurances were given and they could only proceed with an "initial meeting" as the Complainant still had an outstanding tracker mortgage balance.

On **28 November 2016** the Complainant contacted the Provider by telephone to advise that she had cleared her mortgage and wished to take out another one. However, the call appears to have cut off. The Provider called her back on **30 November 2016** to follow up. The Complainant advised that she wanted to find out how much the Provider would lend her. She advised she had been given a gift of the site. The Complainant advised that she did not know how much the site was worth. She was advised she would be able to "bring over" an amount up to her previous closing balance of just over €78,000 on the tracker rate (plus 1%). Details were then taken from the Complainant.

She was advised the maximum mortgage term she could apply for was 26 years, and the tracker rate would apply for the first 16 years (that were left on the previous mortgage term). It was explained that the Complainant was not eligible to apply for the tracker retention product as her income and expenditure information did not meet lending criteria. Essentially, the figures applied for two dependents and her car loan repayments put her disposable income below the applicable lending criteria. The Complainant queried how she could have been previously approved for a mortgage but now would not be approved. It was explained that if she did not have her car loan repayments she would be eligible to apply to retain a tracker rate on a €70,000 mortgage loan. The Complainant was dissatisfied and insisted that the fact she previously had a mortgage meant she should be entitled to a mortgage at this point.

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The Complainant referred to a conversation she had with a Provider official in the branch (the same official who met her on **23 June 2016**) and said she had been told she could get a mortgage in excess of €110,000-€115,000. It was reiterated to the Complainant that she would not be eligible to apply for a mortgage until her personal loan was cleared.

The Complainant became distressed and wondered why she cleared the mortgage in the first place, and that she should have simply kept the proceeds of sale for her new build.

It is worth noting at this point that the Complainant could not have simply kept the proceeds of the sale as the mortgage she had with the Provider was secured over that property, so the proceeds of sale would have had to have been applied to repay the mortgage one way or the other. That said, I understand her frustration.

The Complainant was called back later that day and was advised that the Provider were going to escalate the matter and find out where the branch official referred to had “got her figures from”. The Complainant asked for written confirmation that she was not eligible for a mortgage and for the reasons why to be set out. She was advised to wait until they had spoken with the branch staff referred to earlier in the day.

On **5 December 2016** the Provider contacted the Complainant by telephone. She was advised that after a review of her information it appeared that her income was higher than what she had understood it to be. She was advised that if she cleared her car loan she would be eligible to apply for a loan of €106,000, made up of €78,000 on her tracker rate (plus 1%) plus €28,000 on the standard variable rate. The Complainant wanted to think about this, and on **12 December 2016** the Complainant called the Provider and sought clarity as to what her repayments would be if she were to take out the mortgage. She indicated that she would only intend to draw down the €78,000 on the old tracker rate (plus 1%). She asked for the forms to be sent out to her. She was informed that she would need to furnish a valuation for the site and a price for the build costs.

The Provider’s agent explained what her working hours were over the next few weeks in order to assist the Complainant to contact her.

The Complainant contacted the Provider on **10 January 2017** to enquire as to the status of her application. I note that at this point the ball was still in the Complainant’s court, as she was to furnish a valuation and build cost estimate to the Provider as explained in the **12 December 2016** call. She told the Provider’s agent that the valuation for the land was €30,000, but was still awaiting a valuation of what the finished build would be worth. She was advised that she would receive correspondence as to what supporting documentation she would need to submit – payslips, salary certificate, P60, six months statements for any loans, savings or current accounts not held with the Provider. She was told she would have to pay her solicitor’s fees, stamp duty, and that a valuation fee would have to be paid by her (€150). It was explained that the builder costs would be released on an arrears basis. The Complainant confirmed she would go through the mortgage pack herself and did not need to be brought through it over the phone.

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The Complainant was asked: *“And [Complainant] am I correct in thinking that you’re going to clear that [other] loan before you draw down on the mortgage?”* to which she responded *“Yes”*.

The Complainant was advised of her interest rates and that repayments would be roughly €20 more than what she was previously paying on her old mortgage. The Complainant was advised that a site value had been inputted on the system but that she needed to furnish a valuation in order for the correct information to be entered into the system.

It should be noted, the Provider’s agent who dealt with the Complainant on this call had been dealing with the Complainant’s queries since August, and was essentially her point of contact with the Provider. In my view, the assistance the agent gave to the Complainant, the clarity she provided, and her general manner and conduct were of a very high standard and should be merited.

On **19 January 2017** the Complainant contacted the Provider to explain that she had received a quote for €160,000 for the building costs, and queried whether or not the loan would be advanced when the build costs were so high. She was told that the funds (€78,000) would still be made available.

On **25 January 2017** the Complainant wanted to check on the status of the loan, and confirmed that the Provider would still be in a position to advance the €78,000 even though the build costs could be significantly higher.

The Complainant contacted the Provider on **31 January 2017** with some queries regarding the application form she had received as part of the mortgage pack. She was told a decision would be made 2 or 3 weeks after the required documentation was received.

The Complainant contacted the Provider on **2 February 2017** and was advised that she needed to furnish a copy of planning permission and a [provider] costing form completed by the builder. She was also given this information by email.

The costings were received by the Provider on **4 April 2017**. The Complainant was advised of this during a call on **7 April 2017** and was told that she would receive word once the costings document had been reviewed by the lending team. The Provider states that there was a two week delay on their part at this point due to a “systems issue” and the Complainant’s case was not dealt with by a case manager.

On **26 April 2017** the Complainant called for an update but was told that the application had now expired and she would need to submit a new one. The Complainant was understandably frustrated by this, and was told someone would call her back straight away. On the same day a case manager telephoned the Complainant to apologise for the delay. The Complainant stated that this had been going on since September.

It was from this point onwards that the Complainant became frustrated with the perceived delays in processing this application.

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During telephone calls over the next number of months the basis of this complaint was constantly repeated: that her application had been ongoing since **2016**, and that the delays were unacceptable.

On **12 June 2017** the Complainant was told that her application had been sanctioned in principle, she was advised of the conditions she needed to meet to receive a formal loan offer.

One of those conditions was that she would have to clear her personal loan prior to drawdown of the mortgage.

Analysis

Firstly, it is important to note that the Complainant could not have simply kept the proceeds of the sale of her previous home. Her contention that she should have simply done this is not correct. The proceeds of sale from her previous home would have had to be applied towards the mortgage balance applying to that loan and that property, under the terms of the mortgage that she had.

Secondly, the Complainant did not actually apply for the loan during **2016**. Her application only began in **January 2017**. She had been told she needed to submit valuations and building costs in December.

Thirdly, the Complainant was consistently advised at all times that in order to be considered for the new mortgage (whether under the tracker retention product or at all) she would be required to clear her personal loan. This was because the approximately €400 monthly repayments towards that loan meant she did not meet the income/expenditure criteria to be considered for the mortgage.

This has nothing to do with having previously held a mortgage. The Complainant's contention that because she had a mortgage before she would be entitled to another mortgage is not correct. Each mortgage application must be considered on its own merits.

During **April 2017** the Provider acknowledges a two week delay on its part. During this period the application which commenced in January expired. It has explained that an application is valid for three months. I am not satisfied that sufficient efforts were made by the Provider to alert the Complainant to this three month deadline in advance of it expiring. I can sympathise with the Complainant's frustration in April at having been told she had to apply again.

As it turned out, after re-applying in April 2017 the Complainant was ultimately given sanction in principle in **July 2017** for the mortgage she sought. One condition, however, was that she was required to clear her personal loan. This is consistent with the advice that she was given throughout all of her dealings with the Provider.

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If the Complainant was not clear on this point, it would not be reasonable to find that this was caused by any failings on the part of the Provider.

Another condition attached to the mortgage loan offer was that the Complainant furnish an up to date valuation. The Complainant felt that she had already furnished a valuation and did not feel she should have to pay for another one.

In the Provider's final response to the Complainant's complaint in **September 2017** it stated that it would refund the cost of the valuation, but it remained the Provider's position that the Complainant's personal loan had to be cleared. At that stage the sanction in principle remained valid up to **June 2018**.

From **April 2017** onwards, Complainant's frustration led her to become increasingly critical of the Provider on various matters including accusing it of losing documents. However, I have not been provided with evidence to support any of these accusations. Unfortunately, it would appear to me that the complaint became more interesting in pursuing the Complainant against the Provider rather than obtaining the mortgage loan funds.

Since the Complainant submitted the initial complaint to the Provider, and subsequently to this Office, the sanction in principle has lapsed.

The Provider has acknowledged its failure to advise the Complainant as to the three month time limit for an application to be valid, and the Provider's internal two week delay at the end of this three month period.

In its response to this Office the Provider has set out its position as follows:

"The Provider acknowledges in this particular case that it did not provide an adequate level of customer service to the Complainant in respect of her mortgage application and that the Complainant experienced confusion and frustration during the process.

The Provider again apologises for this. In recognition of this and in an effort to resolve matters for the Complainant, the Provider would like to formally propose the following as a gesture of goodwill:

- *A payment to the Complainant's personal loan account of the outstanding balance of €1,749.85 (as at **27 August 2018**) reducing it to zero and;*
- *An additional payment of €3,000.*
- *In the event the Complainant wishes to progress a new Tracker Interest Rate Retention mortgage application, the Provider will appoint a dedicated Relationship Manager in the TIRR Team to guide the Complainant through the application process.*

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Given the passage of time, the Provider will however require up to date documentation and the Relationship Manager will explain this to the Complainant and assist her with any questions with same. The Provider will also pay the €150 cost required for the valuation of the self build.”

The proposals of the Provider as set out above are, in my view, a very reasonable offer to resolve this complaint.

In that regard, I note from the post Preliminary Decision submissions that the parties have re-engaged in relation to a possible further loan. I welcome this development. Further, I note that the Complainant, in her e-mails to this Office dated 16 September and 10 October 2019, advised that she had accepted the sum of €4,749.85 offered by the Provider in settlement of this dispute.

For the reasons set out above, 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**

11 November 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.