



<u>Decision Ref:</u>	2019-0389
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Credit Union Loan
<u>Conduct(s) complained of:</u>	Dissatisfaction with customer service Refusal to grant consumer credit
<u>Outcome:</u>	Partially upheld

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

Background

The Complainant is a customer of the Provider. During **2018** the Provider declined the Complainant's loan application. On **29 June 2018**, the Complainant contacted the Provider to discuss her loan application and she asked to speak to a Senior loans officer. The Complainant was advised by one of the Provider's loan officers that no Senior loans officer was available at that time. The Complainant then asked to speak with one of the Provider's highest-ranking members of staff but was advised that this individual did not deal with loan applications.

Shortly after this call ended the Complainant received a call from this high-ranking member of staff, who is referred to below as the relevant staff member. The Complainant states that during this telephone conversation, this individual was abusive, condescending, aggressive and unprofessional towards her and he threatened to disclose her personal financial information at the Provider's next AGM.

The Complainant's Case

The Complainant states that one of the Provider's high-ranking member of staff was

"... abusive, condescending and extremely unprofessional towards me in a conversation in June 2018."

The Complainant states that “[t]his has been the second time Mr [...] has been aggressive in his position against me. So therefore this time he has crossed the line and broke the code of ethics in any financial institution.”

The Complainant states that during a phone call this individual said

“How would you feel if I stood up at the AGM and divulge your personal financial details.”

The Complainant states that she is

“... well aware of GDPR and this statement been said from [...] is outrageous.”

The Complainant states that this behaviour

“... needs to be seriously investigated as this should not be the conduct of a [high ranking member of staff]. He has inflicted emotional distress and this complaint needs to be addressed towards Mr [...].”

The Complainant states that a colleague of this member of staff [one of the Provider’s loan officers] lied to the Provider’s Complaints Officer and that this individual was also rude and unprofessional.

The Complainant states that she has asked for a sincere apology from the Provider’s member of staff and this was not done. The Complainant submits that

“[a]n apology is to make a positive out of a negative action, he did not do this!”

In resolution of this complaint, the Complainant states

“I would call for his position to be considered i.e. Dismissal or seek payment of €2,500 for Infliction of Distress.”

The Provider’s Case

The Provider states that in its investigation of the Complainant’s complaint by its Complaints Officer and then by the Complaints Committee, the relevant individual and loans officer were asked for their response to the complaint. The Provider states that the loans officer advised that it was the Complainant who enquired as to when the Provider’s next public meeting was to be held as she wanted to call out the Provider for bullying her. The Provider states that it was in response to this that the relevant member of staff

“... said that how would she feel if she did this and have her personal details made public if she were to raise her personal situation at such a meeting.”

The Provider states that the relevant staff member found it difficult to speak with the Complainant on the phone as she found her to be confrontational and during the conversation the same argument was being repeated. He found that the Complainant would not accept any explanation as to why her loan was refused.

The Provider states that the telephone call eventually had to be terminated. The Provider states that the relevant staff member regrets that the Complainant felt he was condescending towards her and *"... apologises for same as this was not his intention."*

In respect of the Complaints Officer's investigation of the complaint, the Provider states that the Complaints Officer received an email from the Complainant on **3 July 2018**. On **4 July 2018** the Complaints Officer wrote to the Complainant acknowledging her email and enclosed an official complaint form. The Provider states that a receipt of the complaint was also logged on its system. The Provider states that the Complaints Officer commenced his investigation on the same day. The Complaints Officer sought a response to the complaint from the loans officer and from the individual against whom the complaint was made. The Provider states that their responses were received later that day. The Provider states that the Complaints Officer received a completed complaint form from the Complainant, on **9 July 2018**. On **19 July 2018** the Complaints Officer furnished the Complainant with the results of his findings.

The Provider states that the Complaints Committee, at a meeting held on **14 August 2018**, reviewed the complaint to date and examined the procedures undertaken. The Committee found that the Complaints Officer had followed the procedures and timeline outlined in the complaints policy.

The Provider states that the Complaints Committee, at its meeting on **6 September 2018**, made the decision (based on the evidence presented by the Complainant and her witness as well as the replies from the loans officer and staff member concerned) that this staff member should write to the Complainant to say that if she found his tone during the telephone call to be rude and aggressive, that he apologises for this as it was not his intention. The Provider states that this letter was drafted by the relevant staff member on **7 September 2018** and forwarded to the acting Secretary for approval. The Secretary felt that the draft letter fulfilled the requirements as set out by the Complaints Committee and the letter was posted to the Complainant on **12 September 2018**.

The complaint was then escalated to the Provider's Board of Directors which met on **30 October 2018** where the complaint was investigated and discussed. The Provider states that the Board issued a letter to the Complainant on **1 November 2018** advising her of the outcome of its investigation. The Provider states that it does not have a formal code of conduct when it comes to dealing with its members, but it nevertheless, *"... expects that members are at all times treated with respect, courtesy and integrity ..."* The Provider also referred to its Strategic Plan and Training and Development Policy.

The Complaint for Adjudication

The complaint is that the Provider's member of staff was abusive, condescending, unprofessional and aggressive towards the Complainant and also threatened to disclose her financial details at the Provider's AGM.

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 15 October 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.

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 Preliminary Decision, I have carefully considered the evidence and submissions put forward by the parties to the complaint.

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Having reviewed and considered the submissions made by the parties to this complaint, I am satisfied that the submissions and evidence furnished do 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 are sufficient to enable a Decision to be made in this complaint without the necessity for holding an Oral Hearing.

The Complaints Officer

The Complainant made a complaint to the Provider's Complaints Officer by email dated **3 July 2018**. The Complainant wrote:

"I am writing to complain of the unprofessional and poor service I received from [the relevant staff member] and [loans officer].

I applied for a loan last week. I received a call back on Friday 29th from [the loans officer] telling me I did not qualify for the loan because of my credit rating. I do have a poor credit rating for a few years but in these years I have also retained [Provider] loans. When speaking to [the loans officer] I asked if I could speak to a Snr loans officer I was told there was no one available. I then asked to speak with the manager [the relevant staff member] as [the loans officer] was not giving me the answers I required. [The relevant staff member] was unavailable to me at that time, the next day, next week, and next month I was told as she did not have his diary she also told me [the relevant staff member] does not deal with loans. I said to [the loans officer] at this point I do think this is now personnel and verging on bullying by the [Provider] as this has happened before, a few years ago I was told then I could not get a loan I contacted [the relevant staff member] and he told they were not in the ICB when other loans were giving when in FACT I informed him they were! I was then giving the loan I had been refused following that conversation !

On June 29th I received an abrupt call from [the relevant staff member] telling me he doesn't make these calls and he has talked to 2000 out of the 38,000 members and I am the 1 person he has dealt with the most. I have spoken to [the relevant staff member] 3 times in all my years as a member.

The fact he said he deals with me the most, is ridiculous as within 15mins of the phone conversation I entered the [Provider's branch] to make a transaction while doing so [the relevant staff member] approached the counter beside me he either ignored me or did not know who I was which belies that fact that he claims he has dealt with me more than any member !!

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Referring back to the phone call on June 29th his tone was rude, aggressive and personnel as during the conversation he threatened to stand up at the next AGM (As I had asked [the loans officer] when the meeting will take place) and he will divulge my Personal Financial Details. He then mentioned that he had called me about the winning of a car draw in previous years the relevance of which I do not understand! Having listened to [the relevant staff member] my final question to him was 'As a customer/member who has a good record of payments on several loans in recent years what can the [Provider] offer me as a member for 24 years' his condescending reply was and abrupt 'NOTHING'! I feel aggrieved enough to bring this matter at this moment to your attention as the complaints officer to highlight [the relevant staff member's] unprofessional approach to this particular situation."

The Provider's Complaints Officer wrote to the Complainant by letter dated **4 July 2018** enclosing an official complaint form and advised that her complaint would be promptly investigated. The Provider received the Complainant's completed complaint form dated **6 July 2018** on **9 July 2018**.

The loans officer provided the Complaints Officer with the following statement by email dated **4 July 2018**:

"I explained to member that her loan was refused because she had consistently missed payments on her mortgage ... I explained that some months she only paid 350 other months she paid 450. She wanted to know what her mortgage has to do with us it was none of our business. I explained that missed payments on her mortgage affected her credit rating. She then demanded to speak to [the relevant staff member] I rang [the relevant staff member] up and he said he was not available to speak with her. She said the [Provider] was bullying her and she was going to the next public meeting to call the [Provider] out for this. I said I would check with [the relevant individual] and see when he would be available to call her. She said she would be in the office the next day and would not leave until she talked to him. I informed [the relevant staff member] he rang her back straight away."

The relevant staff member was also asked by the Complaints Officer to provide an account of the telephone conversation. He provided a statement to the Complaints Officer dated **4 July 2018** which states:

*"- Member was refused a loan due to missed mortgage repayments
- Insisted/demanded on speaking to the Manager despite being told the Manager does not deal with loan refusals.
- ... phoned member to close the matter. The member began by bawling crying down the phone for first 30 seconds and then proceeded to tackle and confront [the relevant staff member] on the lending decision for the next 12 minutes. She confirmed she was in a restructured repayment with [location] Co Co. she confirmed that she didn't always manage to pay her mortgage on time. She threatened to publicly call out the [Provider] as being hypocritical at our next public meeting. She accused my lender officer of incorrect loan assessment."*

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- The [relevant staff member] mentioned to [the Complainant] that he had spoken a lot to [her] over the years about her financial affairs primarily when applying for loans due to the nature of her credit history. Yet [the Complainant] was of the opinion there was no problem with her credit history.

- The call finished with the [relevant staff member] stating he would review her application and if there was any error in how her loan was assessed the [relevant staff member] would get back to her.

- Having being informed of this members complaint the [relevant staff member] is firmly of the opinion that this complaint is vexatious in nature. The member was very difficult to deal with over the phone and just would not take No as an answer. The [relevant staff member] had to conclude the call after 13 minutes due to [the Complainant] continuing to be confrontational while rehashing the same argument.

- The [relevant staff member] notes [the Complainant] has subsequently stated that I ignored her/didn't know her at the counter following our phone call. This is simply untrue and I take personal offence to this statement. I did not see [the Complainant] in the office! I note also [the Complainant] has stated I was condescending to her. I'm sorry if she felt this way as that was not my intention. What I will say is that I had a splitting headache after coming off the phone due to it nature."

The Complaints Officer issued his findings to the Complainant by letter dated **19 July 2018**.

The relevant part of this letter states as follows:

- “3. Allegations of rudeness and ‘unprofessionalism’ against [the relevant staff member]: I have investigated [the relevant staff member’s] version of events on this and find them to be more credible. It is inconceivable that a ... would state that he would, to quote you, ‘stand up at the next AGM and he will divulge my personal financial details.’ This would breach our code of ethics and most probably result in his dismissal. Indeed, [the relevant staff member] states that you threatened to publicly call out the [Provider] as being hypocritical at our next public meeting and that our lending officer incorrectly assessed your application. Based on the evidence presented to me, I conclude that your complaint in this area is unjustified.
4. Allegation of [the relevant staff member] ignoring you at counter: [the relevant member of staff] attests that he did not see you and there was no question of him ignoring you. Therefore, I conclude that your complaint in this area is unjustified.”

By email dated **23 July 2018** the Complainant expressed her disagreement with the Complaints Officer’s findings.

Complaints Committee

By email dated **1 August 2018**, the Complainant advised the Provider that she wished for her complaint to be passed to the Complaints Committee. The Complaints Committee advised the Complaints Officer by email dated **7 August 2018** that the complaint was not resolved and was being passed to the Complaints Committee.

The Complaints Committee sat on **14 August 2018**. The Provider has furnished a copy of the minutes of this meeting. The Committee reviewed the complaint, relevant correspondence and the process adopted by the Complaints Officer when dealing with the complaint. The Committee also heard from the Complaints Officer, the loans officer and the relevant staff member. The Committee re-convened on **6 September 2018** to hear from the Complainant and her witness. The minutes of this meeting outline the Committee's decision in respect of the complaint and state as follows:

6. Committee Consideration

The Committee discussed the complaint. The following decision was made, based on the evidence presented and the replies [the loans officer and the relevant staff member] had given to the complaint:

- *The complaint regarding the loan refusal was rejected. Reason: [Loans officer has followed the Credit Policy and Procedure in assessing the loan application. Refusal on the inability to pay due to mortgage arrears does not constitute bullying by [the Provider]*
- *[The relevant staff member]: In order to bring a resolution to the complaint [the relevant staff member] is to be asked to write to [the Complainant] saying that if she felt his tone was rude and aggressive then he apologises for that as it was not his intention for it to be so.*
- *That [the relevant staff member] has completed the training course on Ethics by 30th September 2018."*
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By letter dated **10 September 2018**, the Complaints Committee wrote to the Complainant advising her of the outcome of its investigation.

The relevant staff member wrote a letter of apology to the Complainant dated **12 September 2018** in the following terms:

"It has been brought to my attention that in a recent phone conversation between us you formed the opinion that I was condescending to you in our dealings. I am sorry you feel this as it was certainly not my intention."

The Complainant expressed her dissatisfaction at this apology in an undated letter to the Provider. She states that the apology:

"... lacked any reasonable sincerity ... He does not apologise for his aggressive tone his threatening remarks and his complete lack of service to a member of 24 years."

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Board of Directors

The Complainant's complaint was considered by the Provider's Board of Directors at a meeting held on **30 October 2018**. I note the following passage from the minutes of this meeting which records the Complainant's evidence:

"[The Complainant] referred to a previous loan she had with [the Provider] where she was initially refused loan approval and then having spoken with [the relevant staff member] it was subsequently approved ...

When [the Complainant] spoke to [the relevant staff member] and said she may raise her complaint at the AGM, she said [the relevant staff member] asked her if she would feel comfortable if he were to divulge her personal details. [The relevant staff member] told her he could do nothing further."

The Board of Directors wrote to the Complainant by letter dated **1 November 2018** apologising for the way in which the Complainant felt she was treated. However, no findings were made by the Board in respect of the relevant staff member's conduct.

The Complainant's Witness

The Complainant has submitted a written statement from a witness who was present in her car at the time of the telephone conversation with the relevant staff member. The evidence in this complaint indicates that the evidence of this witness was considered by the Complaints Committee and the Board of Directors. This witness states as follows:

"I ... was present in [the Complainant's] vehicle and heard the entire conversation with [the relevant staff member], however, I refer only to the relevant parts of the conversation pertaining to [the Complainant's] references.

Firstly [the relevant staff member] aggressively pointed out,, It was not his job to phone [the Complainant] and I thought it strange that he persisted in doing so and he made it pointedly clear, she was not getting the loan she had applied for.

I later addressed this at the meeting with [the Provider].

He made a statement to [the Complainant], asking how she would feel if he was to divulge her personal financial details at the AGM. I intervened at this stage and told [the Complainant] she did not have to listen to this and how I felt he was out of order.

He continued his tirade talking over whatever attempts [the Complainant] made to speak and seemed oblivious to my own attempted intervention.

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When [the Complainant] asked if there was anything he could do for her as a member of [the Provider] for 20+ years his reply was,, I can do nothing for you,,

He then mentioned the time length of the call and call ended.

Regarding the,, BAWLING CRYING,, comment by [the relevant staff member], [the Complainant] was neither during the conversation.”

Analysis

The telephone conversation which is the subject matter of this complaint, took place on **29 June 2018** following the refusal of the Complainant's loan application. The evidence in this matter demonstrates that the Complainant contacted the Provider to obtain further details as to why her loan application had been refused. Ultimately, the relevant staff member returned her call, and it seems clear that in the course of this conversation, the Complainant indicated that she wished to air her grievances in respect of her loan refusal at the Provider's next AGM.

In the context of this remark the Provider's staff member asked the Complainant how she would feel if her personal financial details were discussed at the AGM. If the Complainant were to raise the issue of her loan refusal at the AGM then the reasons for refusing the loan might have been required to be discussed. This would necessarily involve a discussion of the Complainant's financial affairs. While I do not believe that it would be in any way appropriate for a financial service provider to do such a thing, it is unclear without a recording of the call, as to precisely what tone this discussion entailed.

I would be aghast if the Provider gratuitously threatened to disclose the Complainant's personal financial information at its next AGM; the evidence suggests that this remark may have been made in response to the Complainant's indication that she wished to raise her loan refusal at the AGM.

The Complainant has also stated that the Provider's staff member was abusive, condescending, unprofessional and aggressive towards her during the telephone conversation. There is no recording of this telephone conversation therefore, I have not had the opportunity of listening to this conversation. Through its investigation of the complaint, the Provider has not upheld this aspect of the complaint. However, the Complaints Committee directed that the relevant staff member write a letter of apology to the Complainant and also directed that he complete a training course on ethics. Further to this, the Board of Directors wrote a letter of apology to the Complainant in respect of the manner in which she felt she was treated.

In the absence of the audio recording, I am unable, on the basis of the evidence presented in this complaint, to satisfactorily determine the tone and/or manner in which the relevant staff member spoke to the Complainant during the telephone conversation. I have however, examined in detail the statement of the relevant staff member, dated 4 July 2018, outlining

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his recollection of the telephone conversation, which he made available for the investigation of the complaint.

It is clear from the relevant staff member's statement, which was prepared within 5 days of the telephone conversation taking place, and which I am therefore minded to accept as an accurate recollection on his part, that the Complainant was distressed. Naturally, a call of that nature can be a difficult one, but in my opinion greater efforts might have been made by the relevant staff member to reduce the level of confrontation. This is not the impression given by the statement however.

It seems clear from the statement that he was aware that the Complainant did not understand the difficulty with her credit history and, in particular, the link between (i) her missed mortgage payments and (ii) the Provider's policy on approving loans. One might expect in those circumstances that, as a high ranking member of the Provider, he would have made some attempt to better explain the situation to the Complainant, given that she was clearly distressed at her inability to access credit, per his reference to her *"bawling crying down the phone"*. No such attempts are however referred to in his statement and rather, the relevant staff member appears to have been somewhat offended because the Complainant *"accused my lender officer of incorrect loan assessment"*.

In addition, I note that the following was included within his statement:

"Having being (sic) informed of this members (sic) complaint the [relevant staff member] is firmly of the opinion that this compliant is vexatious in nature. The member was very difficult to deal with over the phone and just would not take No as an answer. The [relevant staff member] had to conclude the call after 13 minutes due to [the Complainant] continuing to be confrontational while rehashing the same argument."

It seems likely to me that the relevant staff member was conscious of his seniority over the Complaints Officer who had requested the statement from him, to aid the investigation of the complaint. His prepared statement, in response to that request, then included what was essentially his own pre-judgment of the complaint as one which was "vexatious". In my opinion, such a comment was utterly inappropriate.

It is also a little surprising that in the course of the telephone call, which the relevant staff member had made to the Complainant, he was clearly very closely watching the clock; he makes three separate references to the time which had elapsed, at various stages of the phone call. In my opinion it might have transpired to have been a less confrontational episode for both parties, if the relevant staff member had focused his attention on how he might better explain the situation to the Complainant, in a way which she would understand. I take the view that the language used by the relevant staff member within his statement is indicative of a lack of respect for the Complainant. It was unnecessary for him to refer to the Complainant as *"bawling crying down the phone"*, and whilst the relevant staff member may well have considered her argument to be one which was being *"rehashed"*, in my opinion it was a matter for the Provider, through this relevant staff member, to seek to explain the

position to her, in a way which would be clear to her, so that she could best understand why the Provider was unable to approve her loan.

It is particularly disappointing, in that context, that the relevant staff member holding such a level of seniority, displayed an utter lack of empathy for the position of the Complainant, who was clearly under financial pressure and had found herself unable to gain access to credit. The relevant staff member, as the professional in this instance, gives the impression that he did not seek in any way to address the Complainant's very real concerns, when she spoke with him on 29 June, in an effort to persuade the Provider to grant her a loan.

I note that when the Complaints Committee met on 14 August 2018, the notes recorded that the relevant staff member's response to the complaint was as his written response dated 4 July 2018, except that he added that the interactions with the Complainant had caused him stress.

Ultimately, after the Complaints Committee had reached its determination, it asked the relevant staff member to write a letter in certain terms to the Complainant. I accept the Complainant's position however, that this form of apology is lacking in any reasonable sincerity. After all, it was not the relevant staff member's apology. Rather it was a letter containing a form of words, the use of which had been specifically directed by the Complaints Committee.

In all of the circumstances, I take the view that the Provider, through the relevant staff member, fell short of the standard of service and communication which the Complainant, as a member of the Provider, was entitled to expect. Accordingly, on the basis of the evidence before me, I take the view that this complaint should be partially upheld.

Conclusion

- My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is partially upheld on the grounds prescribed in **Section 60(2)(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 €400, 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

7 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.