



<u>Decision Ref:</u>	2020-0086
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Repayment Mortgage
<u>Conduct(s) complained of:</u>	Failure to provide correct information Dissatisfaction with customer service Misrepresentation (at point of sale or after) Errors in calculations
<u>Outcome:</u>	Partially upheld

LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

This complaint concerns the Provider's administration of a mortgage application, and in particular the Provider's clarity of communication in respect of the funds that would be made available by way of mortgage loan to the Complainant and the Provider's response to the complaint.

The Complainant's Case

The Complainant sought to apply for a mortgage loan from the Provider by telephone in September 2016. During that call the Complainant explained that his salary was made up of basic and non-guaranteed portions. He was advised that he could apply for €182,000, but that he could not obtain a sanction in principle until he had finished his probationary period in work.

In November 2016, the Complainant having completed his probationary period, applied by telephone for a mortgage loan. He gave his income details and was told he could apply for €234,000. On this call the Complainant did not break down his income into the basic and non-guaranteed portions. The Complainant as part of this complaint states that the Provider would already have known this information as he had provided it on the initial call in September. A sanction in principle issued to him for the amount of €234,000.

However, once the Complainant had formally provided all of the information requested of him, by March 2017, the Provider informed him that he could only obtain a mortgage loan for €208,000.

The Complainant feels misled, and states that this change in amount has meant he could not purchase an investment property in early 2017. He notes that property prices have risen at such a rate that he has lost out on a valuable investment opportunity. He also states that the Provider has inferred that he lied during his application, and the Provider sought excessive unnecessary information as part of the application process.

The complaint is that the Provider has failed to provide information to the Complainant in a clear and accurate manner, and that the Provider has reneged on its agreement to provide a mortgage loan for €234,000. The Complainant would like compensation for losing out on a valuable investment, for inconvenience, and for being accused of lying.

The Provider's Case

The Provider states that its telephone agents are essentially application takers, and not underwriters. Their role is to obtain information in order for underwriters to then consider the application on its merits. It states that the decision about whether to accede to a mortgage application is taken by underwriters and based on all of the information that the underwriters deem appropriate. It states that the information given during the September call would have been on file but it is its practice to seek or verify the information on each call. It notes that the September call did not result in a formal application, so the November call was the call upon which the sanction in principle was based. It states that the sanction in principle was based on information given to it by the Complainant during the November phone call, but once the full information had been received it offered the appropriate amount based on the underwriters' assessment of the application.

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.

/Cont'd...

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 9 January 2020, 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 parties made the following submissions:

1. E-mail from the Complainant to this Office dated 3 February 2020.
2. E-mail from the Provider to this Office dated 13 February 2020.

Copies of these submissions 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.

It is worth making some general observations about the remote application process, and a “sanction in principle” before dealing with the specifics of this complaint.

Firstly, the willingness of providers to receive applications of this nature by telephone has resulted in greater convenience for customers in general. It means not only can consumers progress their applications without having to make appointments and take time out of their day to attend at a branch, but they can also shop around from different providers much more readily.

However, it is important to understand the limitations of this process. As the Provider in this complaint has pointed out, the telephone agents are essentially application takers. They are not underwriters. They do not approve the loan applications themselves, it is their function to attempt to obtain the information they believe the underwriters will require in order to assess the application. They have general guidelines and can offer some steers to a customer, but ultimately the underwriters make the decision about what information is required, whether a loan should be offered, and for what amount.

In that context, a balance must be struck whereby one avoids misconstruing the role of the telephone agent, placing too high an onus on them, and thereby creating a situation where it is impractical for a provider to have a telephone application service available and consumers are once again required to make appointments in branches and progress their applications in person with senior bank officials. That would be a backward step for the consumer in general.

Secondly, the sanction in principle is also an instrument that must be viewed in the correct context. It is a provisional approval, and is granted subject to terms and the receipt of materials which verify the basis upon which the approval is being based.

In this regard, the words *provisional* and *subject to* are critical. It is only when the information upon which a sanction in principle is based has been verified to the satisfaction of the underwriters that a formal loan offer will be made.

Once again, a sanction in principle letter has benefits for a consumer – primarily giving an indication of what further/verifying information is required from him/her and again enables a consumer to shop around more readily. However, a sanction in principle is not a loan offer letter. The sanction in principle which issued to the Complainant on 7 November 2016 is clear in this regard.

Having said all that, I must also point out that it is essential that financial service providers make it absolutely clear to consumers how their processes work and clearly communicate to consumers what stage of the process they are in and what has been approved and what is expected of the consumer and what they can expect in return.

When assessing a loan application it is for the provider to decide what information is necessary or relevant. In the absence of any evidence that information was being required in order to base a decision on (for example) discriminatory grounds, a provider has a wide discretion as to what information it requires when assessing a loan application.

With the foregoing observations in mind, it is clear that the merit of this complaint hinges squarely on what advice/information was given to the Complainant during the telephone calls of September and November 2016, and whether or not the Complainant was misled or the Provider fell short of its obligation to communicate clearly and effectively with him during those calls. Recordings of those calls have been provided in evidence.

The first call was made on 5 September 2016. It was a polite and good natured exchange. From the outset, it is clarified that the Complainant was four months into a six month probationary period. The Complainant was essentially advised that the Provider would not consider an application until his probationary period had ended. When asked how much he was considering applying for, the Complainant sought some guidance as to what amount could be approved. The Complainant explained his financial details. Of most pertinence to this complaint is that the Complainant informed the telephone agent that his salary was made up of two portions: a basic salary of €46,800 and a non-guaranteed annual payment of €5,200.

/Cont'd...

The Complainant explained that under his employment contract his employer reserves the right to withdraw that payment at any time, but his employer had no intention of withdrawing it, nor had his employer ever withdrawn it. A broad range of other financial information was sought and provided. The Complainant's take home monthly pay was described as just under €3,000. It was ultimately decided not to proceed with submitting a formal application due to the remaining two months in the probationary period. The agent explains broadly the nature of mortgage facility in compliance with the consumer protection code. It is explained to the Complainant that if he were to apply for a 35 year loan, the maximum he would be looking at would generally be three and half times his "gross salary". He was told this figure is €182,000. I would point out at this point that that figure is clearly based on a salary of €52,000.

The Complainant explains that this was really all he wanted to know at that point. It was agreed that it would probably better for the Complainant to wait until he had finished his probation period and he could then apply for a sanction in principle. The Complainant was informed that his details will be on the file, and the telephone agent gives his own details to the Complainant so that he can try to contact him again for that application.

The next telephone call was on 7 November 2016. The Complainant advises that he spoke to an agent less than 3 months ago, and he was looking for an application pack to be sent out so that he could fill the necessary forms out. The Complainant seeks some idea of the level of finance the Provider would be willing to offer. In response to an initial inquiry the Complainant explains that his details have not changed. He verifies his marital status and so on. In my Preliminary Decision, I stated that the Complainant describes his gross salary as €52,000 during this call. The Complainant, in his post Preliminary Decision submission, states:

"this is a fundamental misrepresentation. The bank representative asked if my salary remained €52,000 and I verified it was in the context of the notes..."

Having reviewed the call I note that the Provider in fact asked the Complainant:

"how much are you earning every year before tax?"

To which the Complainant responded:

"The Gross salary is €52,000"

Following this, the Complainant sought figures for both owner occupied and principal residence mortgages. There then follows a short discussion about the Provider only taking current earnings into account, and not taking into account the rental income that could be achieved on an investment property. The Complainant is surprised by this, but ultimately moves on and asks that he just get information about a mortgage for a principal private residence.

After various information is requested and provided, all of which is broadly the same as the first phone call, the agent explains the nature of a mortgage facility once again, in compliance with the consumer protection code. The Complainant asks to know what is the maximum amount for which he could get approval?

The agent asks whether he receives bonuses or commissions over and above his gross salary. She explains that €234,000 would be the maximum that the Provider “could look at doing”. The Complainant seeks an approval in principle to that effect. The remainder of the phone call deals with certain other information sought and arranging for the Complainant to be set up on the online application system.

A sanction in principle issues to the Complainant that same day.

Further telephone calls have been provided, but are not relevant to this complaint.

It is quite clear that the telephone agent in the November call was operating on the basis that the Complainant’s salary was €52,000, without taking into account that a portion of this figure could be “non-guaranteed”.

On one hand, the Complainant clearly broke down the €52,000 figure in the September call into the €46,800 basic and €5,200 portions. I would further note that the telephone agent stated that the figure would generally be 3.5 times the gross salary, which he calculated as €182,000. In other words, the September agent considered the gross salary to be €52,000.

On the other hand, the loan application was not in fact submitted until November 2016, and the letter of sanction in principle clearly requires verifying information to be received before it will issue a letter of offer. In the event, the verifying information that was sent by the Complainant did not match with the assumptions that were made when providing the sanction in principle based on the telephone call.

What has occurred here is a simple misunderstanding. Sanction in principle is provided on the basis that the documentation and basis upon which it has issued is later verified. This did not occur in this instance. It became clear once the salary certificate in particular was furnished that the underlying basis for the sanction in principle (a gross salary of €52,000) was not in fact correct.

The Provider was therefore entitled to modify the amount that it was willing to offer, based on the actual figures it ultimately received. As set out above, the Provider is also entitled to decide what information it requires in order to come to a decision.

However, I am satisfied that the failure of the Provider’s telephone agent to accurately glean that information from the Complainant during the November telephone call constitutes a falling short in the Provider’s duty to communicate clearly and effectively, and its duty to seek relevant information from a customer.

/Cont’d...

Having said that, the nature of the compensation that the Complainant is seeking is disproportionate. It would be unreasonable to attach such a level of care to telephone agents whereby they are effectively liable as underwriters in misrepresentation. To do so would render a telephone application system and approval in principle process completely unworkable.

Furthermore, in this instance, there was no real, actionable misrepresentation, but simply a slight lack of clarity, which arose in large part due to the vagaries of human conversation.

I have been provided with no evidence that would support the contention that the Provider has attempted to infer that the Complainant was “lying” in its response to his complaint. I believe that is not a fair or accurate characterisation of its response.

Because I believe the Provider could have been more clear with the Complainant about the process and in arriving at its approval in principle, I partially uphold this complaint and direct the Provider to make a compensatory payment of €500 to the Complainant.

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 €500, to an account of the Complainant’s choosing, within a period of 35 days of the nomination of account details by the Complainant to the Provider.

I also direct that interest is to be paid by the Provider on the said compensatory payment, at the rate referred to in **Section 22** of the **Courts Act 1981**, if the amount is not paid to the said account, within that period.

The Provider is also required to comply with **Section 60(8)(b)** of the **Financial Services and Pensions Ombudsman Act 2017**.

The above Decision is legally binding on the parties, subject only to an appeal to the High Court not later than 35 days after the date of notification of this Decision.

**GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

10 March 2020

/Cont’d...

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.