



<u>Decision Ref:</u>	2020-0116
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Tracker Mortgage
<u>Conduct(s) complained of:</u>	Refusal to move existing tracker to a new mortgage product Refusal to grant mortgage
<u>Outcome:</u>	Partially upheld

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

Background

This complaint relates to the Complainants' mortgage loans with the Provider. The mortgage loans were secured on the Complainants' private dwelling house.

One of the Complainants' mortgage loans was on a tracker interest rate. The Complainants submitted an application for a mortgage loan on a tracker portability product. The application was declined in **October 2015** and the Complainants redeemed their existing mortgage loans with the Provider in **January/February 2016**.

The Complainants' Case

The Complainants submit that they previously held two mortgage loan accounts with the Provider, as follows;

- i. The mortgage loan account ending **3241** was drawn down in **September 2007** on a tracker interest rate of ECB + 0.80% and was redeemed in **January 2016**.
- ii. The mortgage loan account ending **1902** was drawn down in **November 2009** and operated on a variable interest rate and was redeemed in **February 2016**.

Both of the above mortgage loans were secured on the Complainants' then family home.

The Complainants submit that in **2015**, they decided to sell their existing family home and move into a property that the Second Complainant had inherited earlier. They state that they applied for the Provider's tracker portability mortgage product so that they could move their existing tracker mortgage (account ending **3241**) to the new property.

The Complainants submit that the property they intended to move into required renovation and the purpose of the loan application was to fund the renovation works. They state, *"From the outset, we supplied [the Provider] with engineers estimates of the cost of works and the work needed."*

The Complainants submit that the Provider initially offered them Approval in Principle for the tracker portability mortgage product. However they state that the Provider subsequently verbally informed them on **28 September 2015**, that their application had been declined *"on the basis of both rural location and the state of disrepair of the house"*.

The Complainants submit that the Provider has *"acted extremely unfairly"* in declining their application on this basis. They further state that in its Final Response letter of **4 February 2016**, the Provider introduced a number of *"new factors"* as to why their application was declined which were *"never before advised"*.

With regard to the location of the property, the Complainants submit *"... [The Provider] have granted mortgages in similar locations and in any case as pointed out there are many other houses in the locality. It is rural but not isolated."* They submit that the property is *"no more remote"* than the family home they sold which had secured their previous mortgage loans with the Provider.

With regard to the state of repair of the property, the Complainants submit *"The mortgage requested was to renovate the house and [the Provider's] surveyor was happy that the value would be doubled following renovation"*. In response to the Provider's recommendation that the Complainants should have obtained a more comprehensive report or structural survey of the property, the Complainants assert that *"AT NO STAGE was a structural report requested"*. They submit: *"The valuation and valuer was CHOSEN BY [the Provider]. Indeed further instruction from another valuer indicates that [the property] may be worth more. At no stage did [the Provider] raise any issues re defects. At no stage did [the Provider] suggest or request a more comprehensive report or structural survey ... THEY NEVER requested this AT ANY STAGE nor was it recommended by their valuer."*

The Complainants further submit that the Provider only raised an issue regarding access to the property, after their loan application had been declined. They state *"...we provided [the*

Provider] with evidence of a legal right of way, to which [the Provider] raised no issue, either verbally or in writing."

The Complainants further submit that the Loan to Value ("LTV") ratio of the property was below 50% at the time of their application, as per the Provider's valuer's estimate.

The Complainants submit that the Provider *"refused the porting of the tracker mortgage on spurious grounds (without at least recourse to structural engineering advice- bearing in mind that the valuation did not note any structural problems, rather it stated that it would benefit from a structural review)".* They state: *"...it was [their] understanding that banks had entered into an agreement to enable customers to transfer tracker mortgages to another property and this is what we are trying to do, but are presented with unreasonable obstacles".* The Complainants submit that the conduct of the Provider was unreasonable, unjust, and improperly discriminatory for the reasons outlined above.

The Complainants state that ultimately they obtained a loan from a third party Provider instead and they redeemed their mortgage loans with the respondent Provider on **28 January 2016**. They state that the third party Provider approved their loan application *"without any issue"* and *"the engineer overseeing the [third party Provider] mortgage has no issue regarding structure"*.

The Complainants submit that the Provider's actions threatened the sale of their family home and placed *"undue stress"* on them.

The Provider's Case

The Provider submits that in **July 2015** the Complainants applied for a Tracker Portability Mortgage of approximately €97,000, plus an additional mortgage of €43,000. It states that it declined the application as the property in question was not considered appropriate to be held as security against the loans.

The Provider details that the Complainants' mortgage loan account ending **3241** was drawn down on **7 September 2007** on a discounted tracker rate of 4.60%. The loan amount was €148,300 and the term was 20 years. The loan was secured against the Complainants' family home. The Provider details that on the expiry of the discounted period in **September 2008** the account defaulted to a tracker rate of ECB + 0.80% which remained in place until the account was redeemed in **January 2016**.

The Provider states that the Complainants also drew down mortgage loan account ending **1902** as an Equity Release Variable Rate Secured Personal Loan on **23 November 2009** in the amount of €50,000 for a term of 25 years. This loan was also secured against the

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Complainants' family home. The Provider details that the account was drawn down on a variable rate of 3.19% and remained on a variable rate until it was redeemed in **February 2016**.

The Provider submits that it was approached by the Complainants in **July 2015** as they wished to sell their family home and renovate a property that was inherited by the Second Complainant. It states that the Complainants proposed to sell the original property and redeem their existing two mortgage loan accounts. They would then provide the inherited property, which they wished to repair and modernise, as security against the proposed new mortgage.

Regarding the Complainants' submission that they received **Approval in Principle** from the Provider, the Provider states that while it may have outlined roughly how much it would be willing to lend the Complainants for a mortgage, it did not guarantee to approve a full application for a mortgage. It states that a full application and supporting documentation would need to be submitted for assessment, subject to the Provider's lending criteria, prior to the approval of any loan.

The Provider submits that an **Application for Credit** was completed on **9 July 2015**, which stated that the Provider would require a valuation of the property to help it decide if the property represented adequate security for the loan and detailed that *"The valuation report will be based on a limited inspection and is not intended to be a structural survey nor a condition report..... [the Provider] recommends that you obtain a more comprehensive report or structural survey."* The Provider details that the **Statement of Suitability** on **page 9** of the Application for Credit further outlined that *"Lending term, conditions and other restrictions apply. Security and insurance are required."*

The Provider states that, as outlined on the **Application for Credit**, the valuation report is designed specifically for the needs of the Provider to help decide if the property represents adequate security for the loan and the Provider recommends that customers obtain a more comprehensive report/structural survey for their own needs. It submits that in its Final Response of **February 2016** it only wished to clarify to the Complainants that a structural survey had not been completed.

The Provider states that on **14 July 2015** the Complainants' application was submitted for assessment and a number of queries were raised regarding the valuation report. It submits that the valuer had stated, among other things, that there was a *"shared right of way access from country road"*; that *"repair and modernisation"* was necessary; that there were *"No comparable properties in the area"*, and that *"This is a unique and unusual property"*. The Provider states that a request for clarification was made to the Complainants on the above

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points and it requested a site map outlining the location of the right of way and detailing on whose land the right of way was granted and photographs of the property.

The Provider submits the letter received from the Complainant's solicitor was not sufficient to clarify the situation as it was not very detailed and did not contain a site map outlining the right of way. It states that the photographs of the property, along with its location on 'Google Maps', raised concerns about the property's condition and location.

The Provider submits that it chose not to progress the application as the property was not deemed suitable security due to its remoteness and the current state of repair. It states that it declined the application on **22 September 2015**. The Provider submits that it verbally advised the Complainants of the Provider's decision and later issued correspondence to them confirming that the application had been declined on **5 October 2015**. It states that the reasons why the credit was not approved were clearly outlined to the Complainants and also provided in paper medium.

The Provider rejects the Complainants' submission that it has discriminated against them by declining their application. It states that the Complainants' application was reviewed in accordance with its Credit Policy and the proposed property was clearly deemed inappropriate for security purposes based on the information provided. It states that, as outlined in correspondence issued to the Complainants on **3 November 2015**, had they wished to apply with an alternative property to be held as security the Provider would have been happy to review the proposal in full.

The Provider outlines that in assessing an application for credit several aspects of a property being submitted as security to the Provider are considered, including that it must be habitable and not subject to restrictive rights of residence/access or covenants, and consideration is also given to location and properties in poor repair where subsequent resale/rental could be difficult.

The Provider does not agree that new factors for declining the tracker portability application were raised in its Final Response letter of **February 2016**. It states that the Complainants were advised in **September 2015** and in **February 2016** that due to location and state of repair, the Provider did not consider the property suitable security. The Provider submits that it has complied fully with its obligations under the **Consumer Protection Code 2012** in dealing with this matter.

The Complaint for Adjudication

The complaint for adjudication is that the Provider declined the Complainants' application for a tracker portability mortgage in **2015** which was "*unreasonable and unjust, or improperly discriminatory*" to the Complainants.

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 on **17 February 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.

In the absence of additional submissions from the parties, within the period permitted, the final determination of this office is set out below.

The issue to be determined is whether the Provider acted unreasonably, unjustly, or discriminatorily in declining the Complainants' application for a tracker portability mortgage in **2015**.

At the outset, it is important to point out that this Office will not interfere with the commercial discretion of a financial service provider with respect to a decision to accept or

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reject a consumer's application for credit, unless the conduct complained of is unreasonable, unjust, oppressive or improperly discriminatory in its application to a Complainant, within the meaning of **Section 60 (2) of the Financial Services and Pensions Ombudsman Act 2017**. The Complainants were informed of this by letter from the office of the Financial Services Ombudsman when they submitted their complaint. The Complainants responded outlining as follows;

"We feel that the banks decision to refuse the grant of a mortgage on the basis of (a) rural location and (b) state of repair is in accordance with law or established practices, but feel that i[t] is unreasonable and unjust, or improperly discriminatory..."

In order to adjudicate on this complaint, it is necessary to consider the interactions between the Complainants and the Provider in relation to the Complainants' tracker portability mortgage product application between **July 2015 and September 2015**.

The Provider has furnished in evidence a copy of its **brochure** which details the process applicable in **2015** when the Complainants applied for the tracker portability mortgage product. I note that **The Application Stage** section of the brochure details as follows;

"Step 1

First, you should meet with a Mortgage Advisor in your local [Provider] branch. Let them know that you are an existing [Provider] customer who is interested in a Tracker Portability Mortgage. Your Mortgage Advisor will explain to you how the product works and give you a better idea of how much you could borrow and at what mortgage rate.

Step 2

If you are satisfied that the Tracker Portability Mortgage is for you, you should meet with your Mortgage Advisor 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).*
- *Evidence of having at least 10% deposit of the purchase price of the new property and associated cost.*
- *A full valuation on your existing property, at your own cost, completed by an independent valuer from [the Provider's] Valuation Panel (the branch will supply you with a list of local valuers) if the current LTV is greater than 90%.*

At this point, it's a matter of waiting to see if your application is approved. 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.

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To secure a Letter of Approval, an independent valuation needs to be carried out on the new property, arranged by [the Provider] and completed by an independent valuer from [the Provider's] Valuation Panel. If the valuation (property value) differs from the purchase price, we may have to re-assess your application."

I note from the evidence that the Complainants met with an employee of the Provider on **9 July 2015** in relation to the loan application. As part of the investigation of this complaint, the Provider was asked to furnish a statement from the relevant staff member who met with the Complainants at this time. The Provider has submitted *"Unfortunately we are unable to provide a statement from [NAMED EMPLOYEE] regarding his meeting with the Complainants about the Mortgage Loan application as [NAMED EMPLOYEE] has left the Banks employment"*. While it is disappointing that the Provider has not retained a record of this meeting, it does not appear that the matters discussed at this meeting are in dispute between the parties.

I have considered the **Application for Credit** that has been furnished in evidence. I note that the version that has been provided is undated and unsigned by the Complainants, however, it does not appear to be in dispute between the parties that this document is the application that was submitted for assessment. The Application for Credit details as follows;

"...

2. Details of Mortgage Required

Type of Loan:

...

<i>Amount of Loan required</i>	<i>€97,000.00</i>
<i>Purchase price / value of property</i>	<i>€300,000.00</i>
<i>Loan type</i>	<i>Tracker Homeloan ECB + 1.80%</i>
<i>Repayment Term required</i>	<i>12 year(s)</i>

3. Valuation

[The Provider] will require a valuation of and certain other information about the property you wish to buy and/or mortgage. The valuation report, of which you will obtain a copy, is designed specifically for the needs of [the Provider] to help us decide if the property represents adequate security for the loan you require. The valuation report will be based on a limited inspection and is not intended to be a structural survey nor a condition report.

It is important that you should not rely in any way on the valuation report. It is possible that there are defects in the property which are not reported but which a

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more detailed inspection would reveal. This means that the valuation report may not make you aware of defects which could affect your decision to buy. [The Provider] recommends that you obtain a more comprehensive report or structural survey.”

The **Valuation Report** received by the Provider on **21 July 2015** details as follows;

Property Details (Based on visual inspection by valuer)									
The property is 100+ years old.					It is located within 10km of a population centre.				
No planning permissions are required for extensions.					Is there any visual evidence of structural deficiencies in the property:				
None apparent									
Are there any apparent rights of way, easements, way leaves required/provided by the subject property: Yes									
Do you believe that one or more specialist reports are required: No									
Full structural	Damp Report	RECI Certificate	Other	None Required					
No	No	No	No	No					
...									
Factors which may affect future saleability (all questions MUST be answered)									
Noise	Smells	CPO	Planning Issues	Pylon/TC Masts	Flooding	Unusual Aspect/Design Features	Other	None	
No	No	No	No	No	No	No	No	Yes	
Where Other, please specify:									
The majority of surrounding properties / lands are not family related / owned.									
Property Demand Subject to Normal Market Conditions									
Demand for surrounding properties: Satisfactory					Demand for subject property: Satisfactory				
Essential Repairs									
The following essential repairs/works are necessary:					Final inspection required: Yes				
Repair and modernization. Applicant proposes to build extension exempt from planning.									
Property Values									
Present value	€130,000.00			Cost of Repairs/Build	€197,000.00				
Value of Car Space				Value in Repair / on Completion	€285,000.00				
				Rebuilding Cost (to include	€350,000.00				

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<i>outbuildings) for fire insurance (incl professional fees)</i>
General Observations
<i>No comparable properties in the area. This is a unique and unusual property in a scenic location with direct access to a lake which is part owned by the applicant. The property will benefit greatly from the extensive refurbishment and extension proposed. Shared right of way access from county road</i>

A number of the Provider's internal emails in relation to the assessment of the Complainants' loan application on receipt of the valuation report have been furnished in evidence. I have set out the relevant extracts from this correspondence below.

An email sent on **22 July 2015** at 12:32PM details as follows;

"a valuation has been received....

- *as the property is 100+ yrs **a structural survey is required**. Can branch arrange for same to be submitted and when faxing please also submit branch structural survey template.*
 - *the valuer has advised that there is a right of way re access from county road. Can branch arrange for site map to be submitted outlining the location of the ROW and detailing over whose land is the ROW granted.*
- ..." [my emphasis]*

An email sent internally between representatives of the Retail Credit Department of the Provider on **6 August 2015** at 9:15AM states as follows;

*"As discussed would you have a look to see if share right of way access from a country road is an issue.
The property is over 100 years old and there are no comparables.
Please see val attached.
This is a req for a renovation.
I would be happy with the credit side of this application but think the security may be an issue"*

A further email sent internally between representatives of the Retail Credit Department of the Provider on **6 August 2015** at 12:15PM states as follows;

- "...Valuation has already been carried out in respect which I would have some concerns as follows:-*
- a) Property is over 100 years old and therefore **a Surveyors Report will be required***
 - b) Property is valued in its current state at €130,000 with cost of repairs of €197,000 and VIR of €285,000*

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- c) *Costings for repairs have been submitted and while I am not an expert in this regard some of the figures appear on the high end e.g. cost of extension which will not require planning is €52,000. Bathroom furniture and tiling x 2 €8,000 etc.*
- d) *Valuer cannot give comparables as it is a unique and unusual property (no photographs/ would be nice to see how unusual it is) Given there are no comparables we would need a better understanding of how he arrived at VIR of €285,000...*
- d) *Other issue which has been raised is "shared right of way access from country road".*

I assume that this would be dealt with as a Construction Mortgage. The issue in relation to access is a problem as there does not appear to be direct road frontage and access is not owned by the Applicant. Can you advise how these cases are normally dealt with. Is it a simple decline or do we investigate situation in relation to access further before making a decision? Obviously other matters in relation to cost of repairs/VIR would also need to be addressed." [my emphasis]

An email sent on **10 September 2015** from the Provider's Retail Credit Department to the Provider's branch details as follows;

"I have received the solicitor's letter re: right of way. Unfortunately this will not suffice as it is not very detailed. We require details regarding right of way agreement (in writing) along with site map highlighting right of way.

Also, the issue regarding the photographs hasn't been resolved, Valuer has referred to is as "unique and unusual" can we get photographs? I can recall our conversation about the distance that would be required to travel, however having discussed that case with our valuations analyst we are adamant that we see photos of the property. This case will need to be escalated when we receive these"

An email sent internally between representatives of the Retail Credit Department of the Provider on **18 September 2015** at 16:07PM states as follows:

"... we have now received photos of the property ... and correspondence from Solicitor regarding right of way/access to property. I have managed ... to locate property on Google Maps and am a little concerned about both condition and location.

I would like a second opinion on this one please."

A further email sent internally between representatives of the Retail Credit Department of the Provider on **18 September 2015** at 17:45PM states as follows;

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“As discussed given the remoteness of the property and its current state of repair it doesn’t offer suitable security for the Bank unfortunately on this basis I would be unprepared to support.”

An email sent on **22 September 2015** from the Provider’s Retail Credit Department to the Provider’s branch details as follows;

“The subject property and proposal has been reviewed in full by our property specialist along with senior management.

Unfortunately it is not a property that we would look to lend on due to the remoteness of the property and it’s current state of repair. The opinion is that the property does not offer suitable security for the bank.

As such, this is not a deal that the bank would look to progress. If the applicants wish to apply with an alternative property, the proposal will be reviewed in full”

I note that the Provider has furnished an internal file note of a telephone call with the Complainants that took place on **29 September 2015**, as follows;

“Customer was refused a mortgage, and they feel they should not have been refused. Customer is unclear of how living in a rural area would make her not qualify for a mortgage.”

The Provider wrote to the Complainants on **5 October 2015** as follows;

“We regret to advise that after due consideration we are unable to facilitate your application at this time for the following reason.

The request for credit is outside the Banks current lending / credit criteria.”

The Provider has stated that *“a number of queries were raised”* regarding the valuation report. It appears to me that on receipt of the valuation report, the Provider’s Retail Credit Department contacted the Provider’s branch representative who was dealing with the matter to request clarity from the Complainant Applicants on the ‘right of way’ issue and to request photographs of the property. It is most disappointing that the Provider has not furnished in evidence copies of the correspondence it exchanged with the Complainants at this time. It does not appear to me on the basis of the evidence before me, that the Provider informed the Complainants at the time that the clarification received regarding the right of way was deficient. In addition it does not appear that any other clarifications were sought

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by the Provider from the Complainants in relation to the Provider's concerns regarding the valuation report.

I note that the Provider's internal emails of **22 July 2015** and **6 August 2015** state that a structural survey / surveyor's report would be required. It does not appear from the evidence before me, that this was ever communicated to the Complainants. Indeed the Complainants have submitted that *"at no stage did [the Provider] request a structural survey"*. It is unclear to me why a surveyor's report was not requested by the Provider at this juncture, particularly in circumstances where the loan application was declined in part based on the property's *"state of repair"*. On the basis of the Provider's internal communications, it does not appear that the valuation report in and of itself was considered sufficient to assist the Provider in deciding if the property represented *"adequate security for the loan"*.

It is not a matter for this office to deduce whether or not the findings of a structural report would have materially influenced the outcome of the Complainants' loan application. It was a matter of the Provider's commercial discretion whether to accede to the loan application. The Provider was within its right to decline the application in circumstances where it was of the view that the property did not represent adequate security. However in these particular circumstances, I am of the view that the Provider ought to have afforded the Complainants an opportunity to obtain and submit a structural report in support of their application, in circumstances where the Provider was of the view that such a report was *"required"*.

The Provider states that the loan application was also declined due to the remote location of the property. It appears that the Provider reached this conclusion, having located the property on *"Google Maps"*. This is somewhat surprising, given that the valuation report detailed that the property *"is located within 10km of a population centre."*

Notwithstanding the above, based on the evidence before me I accept that no commitment was provided by the Provider to the Complainants at the time of application that the mortgage loan would be successful. I accept that the decision whether to approve the application for a loan is a matter which falls within the commercial discretion of the Provider. This office will not interfere with a financial service provider's commercial discretion in the form of a decision to accept or reject a consumer's application for credit, other than to ensure that the Provider complies with relevant codes/regulations and does not treat the applicant unfairly or in a manner that is unreasonable, unjust, oppressive or improperly discriminatory.

I note that the Provider informed the Complainants of its decision to decline the mortgage loan application in a letter dated **5 October 2015**. The Provider's own lending criteria fall within its commercial discretion. While I must accept that the Provider was entitled to reach

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the decision that the Complainants' application did not meet its lending criteria, I am of the view that if the Complainants had been provided with all relevant material information in relation to their application, they would have had the opportunity to submit further documentation in support of their application in order that the Provider could further assess the suitability of the property. Alternatively the Complainants would have been better informed and could have decided to pursue other avenues sooner than they did, given the poor communication by the Provider.

The **General Principles** set out in **Chapter 2** of the **Consumer Protection Code 2012** ("the **CPC 2012**") provide as follows;

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

...

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

...

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

2.6 makes full disclosure of all relevant material information, including all charges, in a way that seeks to inform the customer"

Provision 4.24 of the **CPC 2012** provides;

"Where a personal consumer's formal application for credit is turned down by the regulated entity, it must clearly outline to the personal consumer the reasons why the credit was not approved. The regulated entity must offer to provide the reasons, on paper or on another durable medium, to the personal consumer. If requested by the personal consumer, the regulated entity must provide the reasons, on paper or on another durable medium, to the personal consumer."

I am not satisfied that the Provider has complied fully with its obligations under the **CPC 2012**. It does not appear to me that the Provider sought from the Complainants information that was relevant to the product requested, that is, additional information regarding the state of repair of the property, nor am I satisfied that the Provider fully informed the Complainants of all relevant material information relating to the assessment of their loan application. The internal emails show that the Retail Credit Department of the Provider had identified issues with respect to the documentation provided regarding the right of way on

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the property and the requirement for a structural report given the age of the property at an early stage in the process. It does not appear that these matters were communicated to the Complainants such that the Complainants could have addressed them in advance of the application for credit being declined by the Provider or taken another course of action at any earlier stage. I am also of the view that the Provider could have been clearer in its communication of the reasons for the declination of the Complainants' application.

There is no evidence that the Provider acted in a matter that was unreasonable, unjust, oppressive or improperly discriminatory in declining the application for credit. The Provider was entitled to decline the application in circumstances where it was of the view that the security being offered by the Complainants was not adequate. This is a matter of commercial discretion.

However I am of the view that there were failures on the Provider's part in its dealings with the Complainants under the **Consumer Protection Code 2012** as outlined above. For this reason, I partially uphold this complaint. To mark the Provider's shortcomings I direct that the Provider pay to the Complainants a sum of €3,000 compensation.

Conclusion

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

I direct, pursuant to **Section 60(4)** of the **Financial Services and Pensions Ombudsman Act 2017**, that the Respondent Provider pay the Complainants a sum of €3,000 compensation to the Complainants, (to an account of the Complainants' choosing, within a period of 35 days of the nomination of account details by the Complainants 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

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—

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(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.

