



<b><u>Decision Ref:</u></b>	2020-0126
<b><u>Sector:</u></b>	Banking
<b><u>Product / Service:</u></b>	Loans
<b><u>Conduct(s) complained of:</u></b>	Refusals (banking) Complaint handling (Consumer Protection Code) Failure to process instructions in a timely manner Selling loan to third party provider
<b><u>Outcome:</u></b>	Rejected

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

This complaint relates to an application for credit and the sale of the Complainant's credit facilities to a third party provider.

**The Complainant's Case**

In **August 2015** the Complainant applied for a business credit facility to stock his farm. The Provider declined this application on **3 September 2015** for the following reasons:

- The Complainant's previous stocking loans were not repaid within the timescales originally agreed;
- One of the Complainant's existing loans was currently in arrears;
- There were items unpaid on the Complainant's current account;
- The Complainant's financial accounts for the year ending **31 March 2013** showed a profit but this was insufficient to cover drawings;
- The Complainant was a guarantor for a company which had an existing liability with the Provider.

The Complainant lodged an appeal in relation to this decision on **4 September 2015** and explained that he would not be in a position to continue with his farm business if he could not get a stocking loan. He also provided further information in support of the application for the credit facility and provided explanations for some of the reasons the Provider gave for the rejection of the loan application.

The Complainant wrote to the Provider again on **11 September 2015** providing further information in support of his application for a stocking loan.

By way of email dated **21 September 2015**, the Provider wrote to the Complainant stating that the additional documentation provided gave the Provider *"no comfort"* and it was still declining his application.

The Complainant wrote to the Provider on **25 November 2015**, stating that he needed this loan and had been a loyal customer of the Provider for many years.

On **8 December 2015**, the Provider sent a list of further questions to the Complainant regarding his credit history and current assets/liabilities. On **11 December 2015**, the Complainant wrote to the Provider answering those queries.

On **14 December 2015** the Provider again wrote to the Complainant stating that it was declining his loan for the following reasons:

- The Complainant is still a guarantor for a company which had an existing liability with the Provider and this company is now in liquidation;
- The Complainant's farm entitlements are being redirected to a bank account with another financial institution and the Complainant is in arrears with his scheduled loan repayments to the Provider;
- The Provider does not have up to date financial accounts to demonstrate repayment capacity.

Further correspondence and calls were exchanged between the parties and on **22 February 2016** the Complainant wrote to the Provider stating that as of **7 September 2015** he had brought his loan account up to date. The Complainant states that as a result of his stocking loan being declined, he has had to use his own funds to stock the land. In his letter, the Complainant seeks advice and help on re-structuring his financial position as he states that he still needs to re-stock his land to enable him to make re-payments on his loans. The Complainant also states in this letter that he has not found the Provider helpful in dealing with his financial difficulties.

On **3 June 2016**, the Provider issued its final response letter to the Complainant. This letter confirmed that the Complainant's *"proposals were assessed correctly in line with our credit application process and policy"* and that the Provider was unable to uphold his complaint. The Provider set out that *"in line with best business practice the letters of 03.09.2015 & 14.12.2015 should have provided a link to our appeals process"* and as it did not, the Provider offered the Complainant an opportunity to reapply for the stocking loan. This letter also included an offer of €100.00 that was offered to the Complainant for the Provider's *"delay in providing you with [the Provider's] final response letter"*.

The Complainant's loan facilities were transferred to a third party on **19 December 2016**, in circumstances where the Complainant was unable to achieve one of the two outcomes outlined by the Provider in its letter dated **29 April 2016**. The Complainant believes this transfer of his existing loan facilities was wrongfully done by the Provider.

### **The Provider's Case**

The Provider submits that it remains firmly of the view that the decision to decline to offer further lending was the correct one and was justified. The existing facilities were in arrears and the Provider was in the process at that time of disposing of its interest in the borrowings to a third party provider. Furthermore, the limited company debt that the Complainant is a guarantor for has not been satisfied and no satisfactory proposals has been received from the Complainant as to how this debt will be cleared.

The Provider does accept that the correct appeals processes were not explained to the Complainant in its letters issued on **3 September 2015** and **14 December 2015**.

As part of its submissions dated **15 May 2019** in response to this complaint, the Provider has offered the Complainant €2,000 in recognition of the shortcomings in the service it provided.

### **The Complaints for Adjudication**

The complaint for adjudication is that the Provider wrongly rejected the Complainant's application for a stocking loan, mishandled his complaint and wrongfully sold the Complainant's existing credit facilities to a third party provider.

### **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.

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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 2 April 2020, 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.

In the absence of additional submissions from the parties, within the period permitted, I set out below my final determination.

In relation to jurisdiction, the Complainant has provided evidence that the annual turnover of his farming operation is less than €3 million per year. Therefore, he falls within the definition of a consumer for the purpose of taking a complaint to this Office.

It is appropriate at this juncture to state that the Provider's decision to transfer the Complainant's loan facilities to a third party provider is a matter which falls within the Provider's own commercial discretion and does not fall within the jurisdiction of this Office. This Office will not interfere with the commercial discretion of a Provider, unless the conduct complained of is unreasonable, unjust, oppressive or improperly discriminatory in its application to a Complainant within the meaning of **s60(2)(b)** of the **Financial Services and Pensions Ombudsman Act 2017**.

The terms and conditions of the loan facility sets out the Provider's rights in regards to transferring the facility. Section 11.32 of the terms and conditions sets out that:

*"11.32 (a) the Bank shall have the right to assign, transfer or sub-participate the benefits and /or obligations of all or any part of any facility to another entity without the prior consent of the Borrower and the Bank may disclose to a prospective assignee or to any other person who may propose entering into contractual relations with the Bank in relation to this Agreement such information about the Borrower as the Bank shall consider appropriate"*

I note that all parties to the complaint are in agreement concerning the timeline of the Complainant's application for the stocking loan and the exchange of correspondence and calls that commenced thereafter.

While I understand and appreciate the difficulties the Complainant has had in stocking his farm, there is no evidence before this Office to suggest that the Provider wrongfully declined his stocking loan application. I note that at the time of his initial application, the Complainant's existing facilities were in arrears and while it appears that the arrears on his personal loan accounts have now been brought up to date, I accept that the Complainant had not paid back prior stocking loans within the agreed timescale.

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Most importantly, I accept that the company debt that the Complainant is a guarantor for has not been satisfied and no satisfactory proposals have been received from the Complainant as to how this debt will be cleared.

I accept that the Provider assessed the Complainant's proposals correctly in line with its credit application process and policy. I further accept that the Provider clearly explained its reasons and rationale for declining the stocking loan application and at all times engaged with the Complainant to attempt to work out a mutually satisfactory arrangement. Unfortunately, this was not possible in respect of the stocking loan.

In respect of the Complainant's claim that his complaint was mishandled, I note that the Provider does accept that the correct appeals processes were not explained to the Complainant in its letters issued on **3 September 2015** and **14 December 2015** and has made an offer to the Complainant of €2,000 in respect of those shortcomings.

I accept that the Provider was not obliged to grant the Complainant the stocking loan and did not act unreasonably in not granting the facility. I also accept that the Provider acted in accordance with the terms and conditions in selling the loan.

In light of the entirety of the foregoing and bearing in mind the offer of €2,000 to the Complainant, and on the basis that this offer is still available to the Complainant, 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**

27 April 2020

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Pursuant to *Section 62 of the Financial Services and Pensions Ombudsman Act 2017*, the Financial Services and Pensions Ombudsman will publish legally binding decisions in relation to complaints concerning financial service providers in such a manner that—

(a) ensures that—

(i) a complainant shall not be identified by name, address or otherwise,

(ii) a provider shall not be identified by name or address,  
and

(b) ensures compliance with the Data Protection Regulation and the Data Protection Act 2018.

