



<u>Decision Ref:</u>	2020-0162
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Repayment Mortgage
<u>Conduct(s) complained of:</u>	Refusal to grant mortgage
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

This complaint concerns the Provider's alleged unreasonable delay in its processing of a mortgage loan application relating to a duplex residential unit with a commercial unit attached.

The Complainant's Case

The Complainant's complaint to this Office refers consistently to matters which are said to have occurred between March 2016 and September 2016. The Complainant appears to be in error in this regard with respect to the year in question in circumstances where it would seem that the correct year to which reference should have been made is '2017'.

The Complainant first approached the Provider on **13 March 2017** regarding a mortgage application. After several months of engagement, and much to the frustration of the Complainant, he was informed by email on **8 September 2017** that the application could not be progressed. The Complainant states that he had numerous telephone conversations and email correspondence with the Provider between **13 March 2017** and **15 May 2017**. During this period, he supplied all requested information and documentation to support the loan application. On **15 May 2017** the Complainant states that he received an email from the Provider, informing him that the "*underwriters approved in principle the loan application and would forward confirmation in writing*". Further documentation was then submitted from the Complainant's "*Irish Accountants and Lawyers*". During June and July 2017, the Complainant states "*he organised and paid for a survey/valuation and building insurance*" as required by the Provider, and also appointed a solicitor. Following more enquiries from the Provider, to both himself and his solicitor, the Complainant states the "*only outstanding issue on 31/07/16 [sic: should read 2017] was a structural survey*".

On **22 August 2017**, in an email to the Complainant and his solicitor, the Provider raised the issue of splitting the folio on the *“duplex and commercial property”*. Over the following weeks, the Complainant discussed with the Provider, alternative means of continuing the mortgage loan application, which included reducing the loan amount or offering separate security. The Complainant goes on to state that these discussions led to an agreement with his solicitor and the Provider to *“resolve matters”*. On **8 September 2017**, the Complainant was informed that the Provider’s underwriter had confirmed it would not progress with his mortgage loan application unless the property folio was split. Following discussions with his solicitor, the Complainant was told that *“this could be done, but could take up to 7 months”*.

The complaint is that the Provider:

1. Has caused the Complainant to *“waste so much time and expense”* in respect of a mortgage loan application *“only to refuse options at the last minute”*. The Complainant states that *“had the Provider highlighted splitting the properties in the beginning, he could have instructed his solicitor to do so”*;
2. Was unwilling to consider alternative suggestions which were put forward by the Complainant, regarding, reducing the loan amount requested or using the entire folio as security for the loan application;
3. Had agreed with the Complainant’s solicitor in or around August 2017 *“to resolve matters”*.

The Complainant wants the Provider to compensate him for expenses that he incurred during the process of applying for the mortgage loan *“estimated to be €4,150.00”* and relating to legal and insurance expenses and other outlay.

The Provider’s Case

The Provider asserts that the Complainant *“did not at any stage make us aware that the properties were on the same folio”*. This matter, it contends, only came to its attention when the valuation report was received and reviewed by its mortgage team. The Provider also submits that it had not reached an agreement with the Complainant’s solicitor, but a *“proposal”* had been discussed.

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.

/Cont’d...

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 25 February 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.

Following the issue of my Preliminary Decision, the Complainant made a further submission under cover of his representative's letter to this Office dated 16 March 2020, a copy of which was transmitted to the Provider for its consideration.

The Provider has not made any further submission.

Having considered the Complainant's additional submission and all of the submissions and evidence furnished to this Office by the parties, I set out below my final determination.

Analysis

It is appropriate in the first instance to point out, as has been notified to the Complainant and to the Provider, that where applications in respect of loan facilities are in dispute, this Office can investigate a complaint as to whether the Provider, in assessing a complainant's application, correctly adhered to any obligations pursuant to the Central Bank's Consumer Protection Code and/or any other regulatory or legislative provisions relevant to such applications. The Provider's decision whether or not to sanction the Complainant's request for a mortgage loan or any security it may require is a matter which falls within the Provider's own commercial discretion and does not involve this Office as an impartial adjudicator of complaints. I will not interfere with the commercial discretion of a financial service provider, 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) (b) of the Financial Services and Pensions Ombudsman Act 2017**.

/Cont'd...

In this instance, the Complainant contends that his time and money was “wasted” by the Provider over the course of several months from March to September 2017 during which period he states the Provider led him to believe that an equity release in the amount of €100,000.00 would be advanced by way of the mortgage of a building owned by the Complainant comprising of a commercial unit on the ground floor and a residential duplex above. Though a Mortgage Loan Offer letter was issued on **31 May 2017** and signed and returned by the Complainant on **7 July 2017**, the mortgage was not ultimately drawn down in circumstances where, towards the end of the process in (August 2017), the Provider insisted for the first time on the division of the folio in which the entire property was contained between the residential and commercial parts such that the security could be registered solely as against the residential part of the property sitting within its own folio. This demand ultimately caused the mortgage sanction effectively to be rendered impractical for the Complainant in circumstances where the folio division would require several months to be completed and in circumstances where the Provider would not accept an undertaking to address the matter after drawdown. The Complainant did not draw down the loan.

The first matter that requires to be addressed is the fact that the demand for the division of the folio was made only after the Mortgage Loan Offer letter had issued and been signed and returned.

The Provider maintains that it learned only in August 2017, following the provision by the Complainant of a valuation report (received on **13 July 2017**), of the fact that both the commercial and residential parts of the property were contained on a single folio (indeed within the same building). The Provider further maintains that this fact was not expressly disclosed by the Complainant prior to that point and the Provider claims that it been operating under the assumption that the residential property sat in its own folio. In this regard, the Complainant provided a Statement of Personal Financial Details document in support of his mortgage application which listed residential property owned and commercial property owned in separate sections. The property relating to the loan application and relevant to this decision was listed separately in each section with a slightly different address in each case; the residential property was listed with a letter ‘A’ after the street number. I accept that this did not communicate the fact that the properties were contained in the same folio (and indeed under the same roof).

The Mortgage Loan Offer letter of **31 May 2017** contained certain ‘Conditions Precedent’ including a requirement that the Complainant furnish a valuation report. The Mortgage Loan Offer also expressly provided as follows within the ‘Conditions Precedent’:

The lender may raise further conditions after receipt of the valuation.

In the circumstances of this case, I accept that the Provider was entitled, following receipt of the valuation report which made clear that the property was contained under the one roof (which led to the realisation that the properties were contained within the same folio), to investigate the nature of the folio being offered as security and to make certain demands in the form of ‘further conditions’ in respect of the application consistent with its policy regarding the provision of mortgages.

/Cont’d...

The Complainant's Representative submits in a post Preliminary Decision submission dated 16 March 2020 that:

*"The [Preliminary] Decision does not take into account of, or attach sufficient weight, to the fact that the undivided folio contained **all of the property** intended to be secured in favour of the Provider as set out in the Letter of Loan Offer. The folio contained additional property **in excess** of that provided for in the Letter of Loan Offer and intended to be secured.*

There was no prejudice to the Provider. The division of the folio was a standard Land Registry application easily capable of being attended to post-completion, and this was accepted and agreed by the Solicitor for the Provider. The Provider was being given all of the security it sought, and more, as accepted by its own Solicitor".

[Emphasis added by the Complainant's Representative]

As I have set out previously it is not a matter for this Office to comment on the suitability or quality of a folio, or any other item, being offered as security as these are matters that fall clearly within the commercial discretion of the Provider

In this regard, I must accept that the insistence by the Provider on the division of the folio prior to drawdown was a matter that fell within the Provider's commercial discretion in the consideration of a mortgage application and I have not been presented with grounds for me to interfere with the Provider's right in this regard. It is a clearly stated policy of the Provider not to lend against commercial property in any circumstances. The Complainant has not sought that I require the Provider to sanction any loan subject to any particular terms, nor do I believe I should. Rather the Complainant wants me to direct the Provider to compensate him for the time and expense he devoted to the project without a positive outcome.

I accept that the demand eventually made by the Provider was a reasonable one. The Complainant essentially takes issue with the timing of this demand coming so late in the process and after significant resources had already been devoted to the project.

The Complainant asserts as follows in relation to the email from the Provider dated **22 August 2017** wherein the division of the folio was originally canvassed:

This is the first time I had received any queries of this and following discussion with solicitor it was my understanding that this could be done, but could take up to 7 months.

My solicitor then engaged with [the Provider's] solicitors to provide assurance that we would provide this with agreement that the loan would be released prior. This assurance was acceptable to [the Provider's] solicitors. (Re. various e-mails August 2016 [sic]).

/Cont'd...

I have reviewed the emails exchanged in August 2017 and I do not agree that they disclose any agreement by the Provider (or its agent) to accept an assurance or undertaking by the Complainant to attend to the division of the folio at some point after drawdown. On the contrary, the Provider's emails of **29 August** and **7 September 2017** are quite clear in their insistence that the division will be necessary prior to sanction. There is one email of **31 August** from the Complainant's solicitor to the Provider which, immediately prior to setting out the 'undertaking' option, queries "*would you be happy with the following proposal?*" The email also states, at the end, that the author has discussed the matter with an individual in the Provider's solicitors' office who "*would be happy to proceed on this basis*". This is not commensurate with any agreement having been concluded with the Provider's solicitors or with the Provider.

I accept on the evidence before me that the Provider sought to insist on the division of the folio based on its own policy and on an individual assessment of the mortgage application and that it has not acted unreasonably in doing so.

I appreciate that it was frustrating for the Complainant to encounter this problem at such an advanced stage of the loan application.

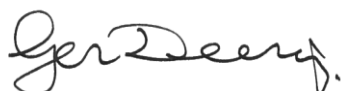
However, I do not believe it would be reasonable to hold the Provider responsible for this. Given that the two properties had slightly different addresses, were set out separately by the Complainant in his Statement of Personal Financial Details document with his application and given that one was a commercial property and the other residential, it was not unreasonable for the Provider to assume they were on folios until it was informed otherwise by the Complainant.

The Complainant has not established any unreasonable, unjust, oppressive or improperly discriminatory conduct on the part of the Provider. For this reason, 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

20 April 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.