



<u>Decision Ref:</u>	2020-0168
<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
<u>Outcome:</u>	Rejected

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

Background

The Complaint relates to a mortgage loan account held by the First Complainant with the Provider.

The Mortgage Loan Offer Letter which was signed on **20 April 2004** outlined the Loan Type as “*Variable*” and the loan was issued on a tracker interest rate of ECB +1%. The Loan Amount was **€355,000** and the term was 30 years.

The First Complainant together with his wife (the Second Complainant), submitted an application for a Home Mover Mortgage with the Provider in or around **June 2015**. The application was declined in **June 2015**. The Complainants submitted an appeal in **July 2015** and this was declined in **August 2015**. The Complainants submitted a further appeal in **August 2015** and this was declined in **November 2015**.

The Complainants' Case

The Complainants submit that on **20 April 2004**, the First Complainant signed and accepted a Mortgage Loan Offer Letter from the Provider dated **19 April 2004**. The Particulars of the mortgage loan offer detailed that the interest rate applicable was a tracker variable interest rate of ECB +maximum 1%.

The mortgage loan account was secured on the First Complainant's then family home.

The First Complainant submits that in **2015** he decided to sell his family home and purchase a new property jointly with the Second Complainant to live in. The Complainants submit that they applied for the Provider's "*Tracker Mover*" rate product so that the First Complainant could move his existing tracker mortgage (account ending **5111**) to the new property.

The Complainants submits that they wished to maintain the First Complainant's current mortgage of €260,000 and "*simply port it across to the new property*". The First Complainant submits that he was selling the property secured by mortgage loan account ending **5111** for €395,000 and was purchasing his new property for €395,000, and he submits that this represented a loan to value of 65.8%.

The Complainants contend that they were informed by an employee of the Provider at the initial meeting on **04 June 2015** that it was a rate they were "*wholly entitled to and for which we met the bank's and Central Bank's lending criteria*" but the Provider subsequently declined the application, providing "*different reasons*" each time between **June and September 2015**.

a. Initial Application (June 2015)

The Complainants submit that they met with an employee of the Provider in a local Branch on **4 June 2015**. The Complainants submit that this employee confirmed to them that they qualified for the *Tracker Mover* rate product, in addition to the Provider's offer of 2% cashback. The Complainants submit that the employee made a call during their meeting to confirm this and their application was formally submitted.

The Complainants submit that on **21 June 2015**, they contacted the employee for information regarding their application. The employee telephoned them back on **22 June 2015** informing them that the Provider's "*mortgage centre*" required more information from the First Complainant regarding his business activity. The Complainants submit that they responded to this request on the same day (**22 June 2015**) with the required information.

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The First Complainant submits that on **29 and 30 June 2015**, he made several calls to the employee requesting an update on their application. The First Complainant submits that the employee highlighted that there was an issue with the First Complainant's Irish Credit Bureau report and on this basis, the Complainants' application for this product was declined.

b. Appeal (July 2015 – September 2015)

The Complainants submit that they met with the member of staff on **3 July 2015** to discuss their application being declined. The Complainants submit they were informed that the Irish Credit Bureau report indicated two issues:

1. The First Complainant held a car loan, with a Second Provider, which was pending litigation. The Complainant submits that he confirmed that he had "*missed payments in 2012 and 2013*" but had been in constant communication with that Second Provider and had rescheduled the missed payments by agreement.

The First Complainant submits that he subsequently learned that the Second Provider had sold his car loan account to a Third Provider, and this car loan had been incorrectly "*coded*" by the Second Provider. The Complainant submits that this was an error on behalf of the Second Provider, which was "*acknowledged and rectified*" by them; and

2. The First Complainant submits that the Irish Credit Bureau Report also "*incorrectly stated that an element of an [Fourth Service Provider] account was written off*". The First Complainant submits that this was also a "*coding error*" and the Fourth Provider sold this account to a Fifth Provider, who then sold the account to a Sixth Provider. The First Complainant submits that the Fifth Provider refused to clarify the issue but that the account was paid in full "*without any write off whatsoever at any time*".

The Complainants submit that once the above two issues were investigated and clarified to the Provider, they were under the impression that the issues had "*been explained and accepted to [the Provider's] satisfaction*".

The Complainants submit that on **09 July 2015**, they contacted the Provider seeking an update on their appeal. The Complainants submit that on **15 July 2015** the Provider contacted them seeking further information for their appeal. The Complainants submit that the member of staff stated that she was "*requesting that the Branch Manager...get involved*" in the appeal.

The Complainants submit that on **23 July 2015**, the Branch Manager contacted them seeking further clarification regarding the Irish Credit Bureau report. The Complainant submits that they sent a full reply to the Branch Manager on the same day, including a letter from the Third Provider confirming that the car loan account was up to date and that there was no litigation pending. The Complainants submit that on **30 July 2015**, they contacted the staff member of the Provider seeking an update as the First Complainant had accepted an offer on his private dwelling house and was "*under pressure for a decision*" from the Provider.

The Complainants submit that on **7 August 2015** the Complainants' application for the Tracker Mover Product was declined by the Provider's mortgage underwriters because:

1. The Complainants had a poor repayment record, despite the Complainants holding €42,000 in savings; and
2. The First Complainant's mortgage loan account ending **5111** was being paid by his debit card rather than a direct debit.

The Complainants submit that they were asked to comment on this as their appeal was being escalated to the Provider's Regional Manager. The Complainants submit that they replied in detail on **09 August 2015**. The Complainants submit that on **12 August 2015**, the prospective buyer of the First Complainant's private dwelling house pulled out due to him not being able to meet the closing date. The Complainants submit that on **14 August 2015**, the staff member of the Provider stated that a meeting was to take place on **17 August 2015** between the Provider's Branch Manager and the Regional Manager regarding his application.

The Complainants submit that on **19 August 2015**, they met with the Provider's Branch Manager who confirmed that their application was again being declined. The Complainants submit that the reasons for declining the application were:

1. Reliance on future projects as per the First Complainant's forecasted figures;
2. Increased living expenses when they moved to the new area in his new private dwelling home;
3. The Complainants do not appear to be regular savers; and
4. A reference to car loan issue with the Second Provider which appeared on the Irish Credit Bureau Report.

The Complainants submit that the Provider's Branch Manager suggested that they reply to the reasons given for the rejection of the appeal so the Branch Manager could escalate the appeal. The Complainants submit that on **20 August 2015**, they "*gave a very robust reply to deal with each and every concern raised by [the Provider]*". The Complainants submit that they offered to lodge 6 months of mortgage payments on deposit for a period to be agreed

and a guarantor on the mortgage loan account, as additional security to the Provider. The Complainants submit that he was never asked additional questions about this offer.

The Complainants submit that on **26 August 2015** they emailed the Branch Manager seeking an update regarding the appeal. The Complainants submit that the Branch Manager responded to them on **27 August 2015**, stating that he should have a response by **28 August 2015**. The Complainants submit that on **01 September 2015**, they again contacted the Branch Manager seeking an update. The Complainants submit that the Branch Manager responded on **02 September 2015** stating he will let the Complainant know of the outcome as soon as possible.

The Complainants submit that on **08 September 2015** they again contacted the Branch Manager as they still did not have a reply. The Complainants submit that they also requested a meeting with the Area Manager. The Complainants submit that on **11 September 2015**, the Branch Manager contacted them to say that he was away from the office and that he would contact them again on **14 September 2015**.

The Complainants submit that on **15 September 2015**, the Branch Manager called them to tell them that their appeal had been declined on for the following reasons:

1. The Complainants' income multiples were not satisfactory; and
2. The Complainants' disposable income levels were not sufficient.

The Complainants submit they again wished to appeal this decision.

c. Subsequent Discussions (September 2015 – November 2015)

The Complainants submit that on **17 September 2015**, they met with the Branch Manager along with a financial advisor to discuss the refusal. The Complainants submit that the Branch Manager was unwilling to "*explain or elaborate on the decision, how it was reach[ed] or how the income multiples were applied to arrive at the decision*". The Complainants submit that the Branch Manager informed them that he was not willing to confirm what amount the Provider were prepared to lend given the income multiples, nor was he willing to comment on the Complainants' previous suggestions "*of guarantors or cash placed on deposit*". The Complainants submit that the Branch Manager informed them that this was the Provider's final decision and stated that it would be a "*waste of time*" to raise an official complaint with either the Provider or this office.

The Complainants submit that on **21 September 2015**, they made a complaint to the complaints department of the Provider and on **06 November 2015**, they received a letter from the Provider confirming that their application was being declined.

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The Complainants submit that during the application process, their circumstances improved “*materially*” as follows:

- The First Complainant sold his private dwelling home for €385,000 (a reduction on the original sale agreed price of €395,000);
- The Second Complainant’s salary increased from €21,000 per annum to €28,000 per annum;
- The First Complainant’s car loan was repaid in full;
- The First Complainant’s loan with the Fourth Provider was repaid in full;
- The Complainants had now completed 4 months of mortgage payments by way of direct debit, instead of debit card; and
- The adverse error entries on Irish credit Bureau report had now been rectified and updated.

The Complainants contend that the Provider “*by its actions, whether with deliberate intent or due to poor underwriting and/ or deficient customer advice*” led the Complainants to believe that a re-mortgage was possible. The Complainants submit that the Provider “*constantly changed the goal posts*” and reasons for declining the Complainants’ application for a Tracker Mover product. The Complainants submit that the Provider continued to decline their application, despite the Complainants providing “*detailed evidence*” to demonstrate their ability to continue to pay the mortgage loan account.

The Complainants submit that they were not seeking additional funding but to continue “*with the mortgage [he] had been servicing for the last 11 years in an exemplary manner*”. The Complainants contend that the Provider “*wanted to find reasons to decline*” their mortgage loan application and “*deliberately embarked on a journey of issuing [the Complainants] with a ‘slow No’*”. The Complainants further submit that the Provider’s treatment of them has been “*appalling*” and has caused them “*undue stress*”. The Complainants further submit that they have suffered financially as a result of the Provider’s actions.

The conduct complained of is that that between **June and September 2015** the Provider unreasonably declined the Complainants’ application for a Home Mover Mortgage, in circumstances where, they were led to believe that this was possible. In this regard, the Complainants submit that the Provider’s actions were either deliberately intentional or due to poor underwriting and/or deficient in customer service.

The Provider's Case

a. Initial Application (June 2015)

The Provider submits that the Complainants attended at a Branch of the Provider on **4 June 2015** and discussed the option of a "Home Mover Mortgage" and the Provider's 2% cash back offer with one of the Provider's Senior Business Advisors. The Provider submits that during this meeting with the Complainants, it was indicated to the Complainants that their application for the Home Mover Mortgage would have to be assessed by the Provider's credit department.

The Provider submits that during this meeting, it was indicated to the Complainants that the Provider would be willing to review the Complainants' application for a Home Mover Mortgage Product and 2% cashback offer "*within the parameters of the [Provider's] general lending policy rather than an assurance regarding the likely success of the application*". The Provider details that it is not obliged to provide the Complainants with a Home Mover Mortgage Product, nor can it advise a potential borrower of whether or not they will ultimately avail of the product until the loan application is complete.

The Provider submits that the Complainants' application for the Home Mover Mortgage Product was reviewed by one of the Provider's underwriters on **26 June 2015** and the Provider's underwriter detailed that she was "*not happy to support...given poor track record, previous issues with short term debt gone legal*" and that she recommended that the application be declined. The Provider submits that its underwriter sent her recommendation to one of the Provider's Senior Underwriting Managers, who assessed the application on **29 June 2015**. The Provider submits that the Senior Underwriting Manager agreed with the recommendation to decline the Complainants' application on the basis of "*...other issues with bureau history, significant NDI exception and scorecard decline*". The Provider submits that its Senior Underwriting Manager further stated that an "*appeal from branch should be with the benefit of current account statements, proof of savings 42k and satisfactory explanation as to circumstances behind revoked/ written off credit card and Leasing loan that is pending litigation*".

The Provider submits that the Senior Underwriting Manager's decision to decline the application was issued to the Provider's Branch on **29 June 2015**, and this decision also indicated that if "*there are material changes in the facts relevant to this application that may change the decision*". The Provider submits that this decision was communicated to the Complainant on **30 June 2015**.

The Provider submits that on assessment of the Complainants' application, the Provider had concerns in relation to the Complainants' *"ICB record, repayment history and repayment capacity"* and these issues influenced the Provider's decision to refuse the Home Mover Mortgage Product Application. The Provider submits that it made a commercial decision to refuse the application and it retains a discretion as to whether to offer a loan or not after considering the loan application.

b. Appeal (July 2015 – September 2015)

The Provider submits that on **30 July 2015**, one of the Provider's Mortgage Advisor's submitted an appeal to the Provider's Underwriting Department in respect of the Complainants' application. The Provider submits that the Complainants' Mortgage Advisor indicated in the appeal that they *"strongly feel this needs to be looked at and assessed again as there is clearly no increase in risk exposure"*. The Provider submits that on **06 August 2015**, one of its Senior Business Advisors further wrote to the Provider's Underwriting Department seeking an update on the application. The Provider's Underwriting Department responded to the Senior Business Advisor stating that the *"original decline decision stands"*.

The Provider submits that all applications for credit are assessed on their own merits and *"according to a strict set of credit criteria"*. The Provider submits that due to the *"commercial sensitivity of the analysis applied in assessing these applications, the [Provider] is not in a position to provide details of the [Provider's] lending policy"*. The Provider submits that the reason for refusing the Complainants' appeal was:

1. The Complainants had a *"poor repayment record in 2014 with the Irish Credit Bureau"* which suggested that there was legal action pending at a time when the Complainants asserted they held €42,000 in savings;
2. The Provider further submits that it was noted that the First Complainant did not pay his existing mortgage by way of direct debit, but instead by way of cash *"which is not satisfactory"* and the Provider submits that *"normal prudent Banking practice is to seek evidence of mortgage repayments through a Bank account."*; and
3. It was *"not clear why"* the Complainants needed to move from a Dublin apartment to a large four bed property, and the Provider noted that the Complainants could easily secure a *"satisfactory home for much lower borrowing requirements within lending criteria c. €150,000."*

The Provider submits that the Complainants' application was dealt with in the same manner as all mortgage applications *"using standard application process and home loan lending criteria"*.

The Provider further submits that the Provider processed the Complainants' application "*correctly and in line with its lending criteria*". The Provider further submits that it reached its decision based on the relevant information and after proper procedures. The Provider submits that it explained the "*precise reasoning*" for its decision to refuse the mortgage loan application. The Provider submits that the Provider's internal lending criteria falls within the Provider's lending discretion.

The Provider submits that one of its Senior Business Advisor's unsuccessfully attempted to contact the Complainants by telephone on **07 August 2015**, but left a voicemail. The Provider submits that on the same day, the Provider's Senior Business Advisor emailed the Complainants confirming that the appeal had been declined by the Provider's Mortgage Underwriters, and therefore he was "*escalating the appeal*" to the Provider's Regional Manager. The Provider submits that this email contained the reasons as listed at 1 and 2 above.

The Provider submits that the Provider's Senior Business Advisor telephoned the First Complainant on **17 August 2015** to request him to attend at a Branch of the Provider to meet with herself and the Provider's Branch Manager. The First Complainant attended at a meeting on **18 August 2015** to discuss the declined mortgage loan application. The Provider submits that following this meeting, its Branch Manager emailed the Complainants on **19 August 2015** raising the following queries about the mortgage loan application:

"Can you please respond to the following concerns:

- 1. There's a reliance on future projections this year and next re income which is totally outside credit policy – can you allay these concerns?*
- 2. Naturally incur additional travelling expenses, higher LPT, and living costs moving to a property of this size*
- 3. Don't appear to have regular savings"*

The Provider submits that on **20 August 2015**, the Complainants responded, but as the appeal had already been declined, the Provider's Branch Manager was required to send the Complainants' further request to appeal the decision regarding the mortgage loan application to the Provider's Regional Office for approval prior to it being eligible to be submitted to the Provider's Credit Department. The Provider submits that the Provider's Branch Manager sent a copy of the Complainants' appeal and additional information to the Provider's Regional Office, however the re-appeal was not supported by the Provider's Regional Office and the Provider submits that no appeal could then be submitted by the Provider's Branch Manager on behalf of the Complainants.

c. Subsequent Discussions (September 2015 – November 2015)

The Provider submits that on **17 September 2015**, the Provider's Branch Manager and Senior Business Advisor met with the Complainants and advised them of the Provider's decision to not re-appeal the mortgage loan application. The Provider submits that the Complainants were advised of the Provider's reasoning behind its decision and that it could not "*sanction the proposal as it stood*".

The Provider outlines that as part of its assessment of the Complainants' mortgage loan application, the Complainants wished to re-appeal the Provider's original decision and the Provider submits that the Complainants submitted further information to the Provider to support their appeal. The Provider submits that it was required to assess the new information submitted by the Complainants and as part of its obligations under the **Consumer Protection Code 2012**. The Provider details that its decision to uphold the previous decline of the Complainants' application was based on the new information submitted by the Complainants.

The Provider submits that although the Complainants furnished the Provider with additional information following the decline of their mortgage loan application, the application still did not satisfy the Provider's lending requirements and so the Provider could not sanction the loan facility. The Provider submits that the decision to decline the Complainants' application was based on the financial circumstances of the Complainants and the Provider outlines that it was only in a position to carry out such an assessment "*upon receipt of all supporting vouching documentation from the Complainants, and not at any stage prior*".

The Provider details that it does not accept that the Complainants were led to believe that their mortgage loan application would be possible, but instead the particulars of the Provider's credit and / or lending policy was applied to the Complainants' application and subsequent appeal. The Provider submits that its lending documents are commercially sensitive documents and form part of the Provider's "*exercise of its commercial discretion*".

The Provider submits that it did consider the Complainants' mortgage loan application and their subsequent appeal of the Provider's decision in full and the Provider made its decision as it "*believed the Complainants financial circumstances did not make it prudent to advance a mortgages loan to the Complainants and was outside [the Provider's] lending criteria*".

The Complaint for Adjudication

The complaint for adjudication is that between **June and September 2015** the Provider unreasonably declined the Complainants' application for the "*Home Mover Mortgage*" product, in circumstances where, they were led to believe that this was possible.

The Complainants submit that the Provider's actions were either deliberately intentional or due to poor underwriting and/or deficient in customer service.

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 **06 April 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 unreasonably declined the Complainants' application for "*Home Mover Mortgage*" product between **June and September 2015**.

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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 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 on **14 January 2016**.

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' Home Mover Mortgage product application between **July 2015 and September 2015**.

I note that both the Complainants and the Provider have used the terms "*Tracker Mover Mortgage*" and "*Home Mover Mortgage*" interchangeably in their submissions to this office in relation to this complaint.

I note from the evidence that the Complainants met with an employee of the Provider on **04 June 2015** in relation to the mortgage loan application. As part of the investigation of this complaint, the Provider was asked to furnish copies of any contemporaneous notes, records, minutes or memoranda of this meeting. The Provider has not submitted any contemporaneous notes of this meeting but rather has submitted a statement from the Provider's Senior Business Advisor who was in attendance at this meeting.

This statement outlines as follows;

"I met with the [First Complainant] on 04 June 2015 to discuss his application for a new mortgage of €260,000. [The First Complainant] had an existing mortgage with the Bank which was drawdown in 2004 on a [property] in [location] and they were now looking to buy a [property] in [location]. [The First Complainant] advised that he had gone "sale agreed" on the [property] and would have approximately €128,000 equity from the sale of this [property]. He also advised that they had savings in excess of €42,000 which they would also put towards the purchase of the new property. There would be no increase in the Bank's lending as the customers already had a mortgage liability on the apartment of €260,000. [The First Complainant] hoped to apply for a Tracker Mover Mortgage product as his existing mortgage was on a tracker rate of interest. During this meeting, we discussed the option of a Home Mover Mortgage Product and the 2% cashback offer which was available at the time. I outlined the criteria for same with [the First Complainant]. I advised [the First Complainant] that his application would have been submitted to the Bank's Credit Department for assessment and review and that the Banks credit and/or lending policy applied to their application. [The First Complainant] provided details relevant to his employment and

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his company, [named] and to the [the Second Complainant's] employment and their financials."

The First Complainant's recall of this meeting is slightly different, in that, he is of the view that he was informed that the Home Mover Mortgage *"was a rate [the Complainants] were wholly entitled to and for which we met the bank's and the Central Bank's lending criteria"*. The Complainants submit that this member of staff made a call during their meeting to confirm this and the application was formally submitted.

As part of the investigation of this complaint, the Provider was asked to furnish a copy of the **mortgage application** which was submitted by the Complainants at this time. The Provider has submitted that *"it does not hold a copy of the Complainants mortgage loan application form."* While it is disappointing that the Provider has not retained a copy of this document, it does not appear to be in dispute that the application was completed by the Complainants at this meeting, nor is there any dispute as to the content of the application.

The Provider has furnished a copy of screenshots from its internal system which records the **mortgage loan application notes**. These notes record a significant amount of detail relevant to the Complainants' application under a number of headings: Background, Proposition, Employment, Current account operation. The **mortgage loan application notes** then record as follows:

"Repayment Capacity

When we consider that they will be carrying forward their Tracker Rate + 1% and that there is no increase borrowing – repayment can be evidenced from their existing Mortgage repayments.

Pros

*Repayment Capacity Evidenced
Strong LTV*

Cons

*Income Multiple exception
NDI Exception*

Recommendation

While we accept that this application is a double exception, [the Complainants] were adamant that we submit application based on the evidence of repayment capacity and the fact that there is no increase in lending.

Taking this into consideration Branch is happy to support.

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Based on the evidence before me I accept that no formal commitment was given by the Provider to the Complainants at the time of application on **04 June 2015** that the mortgage loan application would be successful. I accept that a preliminary discussion had taken place with respect to the Complainants' eligibility to apply for the particular product and that the Provider's representative in the Branch may have given the Complainants' assurances on foot of those conversations, that they met the criteria for applying for the Home Mover Mortgage product and that it appeared on the basis of the discussions that they were eligible for the proposed lending. Certainly the **mortgage loan application notes** which are quoted above, show that the Branch representative was very supportive of the application on the part of the Complainants.

However, it is my view that the Complainants ought to have been aware at the meeting with the Branch on the **04 June 2015** that their formal application for the Home Mover had to be first submitted, before it could be formally assessed and approved. The Complainants state in their letter to this office dated **12 December 2015** that during this meeting the employee made a telephone call and then "*the application was formally submitted*". In these circumstances, it is clear to me that aside from any preliminary assurances as to eligibility that the Complainants may have been given based on the verbal information that they gave to the Provider's representative, the Complainants were aware that their application had yet to be formally assessed and approved by someone other than the Branch Representative. I am of the view that no formal assessment had taken place during the meeting on the **04 June 2015** such that the Complainants could have formed a reasonable view that the loan had actually been approved at this time.

On **21 and 22 June 2015**, the Provider and the Complainants were in contact with respect to the application and the Complainants submitted the additional information requested by the Provider.

The Provider has furnished this office with **screenshots from its internal system** with respect to the Complainants' application. An entry was made on **29 June 2015** by the Credit Department which outlines as follows:

"Unfortunately, following assessment and referral to Manager level, as presented the application is deemed to carry an unacceptable credit risk and has been declined for the following reason(s):

Note currently servicing same level of debt but other issues with bureau history, revoked/written off credit card and Leasing Loan that is pending litigation, significant NDI exception and scorecard decline – while they appear to be doing the right thing in terms of selling existing [property] – in reality should be looking at properties at lower PP and lower debt level, not agreeable to supporting as presented.

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If there are material changes in the facts relevant to this application that may change the decision, please feel free to contact me on (direct line)."

The Provider informed the Complainants of its decision to decline the mortgage loan application on **30 June 2015**. It appears that this was communicated to the Complainants by way of telephone call. This office requested recordings and/or transcripts of this telephone call as part of the investigation of this complaint. The Provider in response to this request detailed "*none such*". It is disappointing that the Provider does not hold this evidence or has not indicated to this office why it does not hold this evidence. However it does not appear to be in dispute between the parties that this telephone call took place and that the outcome of the Complainants' application for the Home Mover Mortgage product was communicated to the Complainants at this time.

The **statement** from the Provider's Senior Business Advisor who called the First Complainant on **30 June 2015**, records as follows:

"I called [the First Complainant] again on 30 June 2015 and advised him that the application had been declined and I advised that track record on previous loans was a factor as I did not know about this. [The First Complainant] was not happy with the [Provider's] decision and we agreed to meet in branch to discuss on 02 July 2015."

It is important for the Complainants to be aware that setting and applying the Provider's lending criteria is a matter that is within its own commercial discretion. The Provider was within its right to decline the application in circumstances where it was of the view that the Complainants' application carried an unacceptable credit risk for the Provider.

In this regard I would also highlight to the Complainants that **Chapter 5 of the Consumer Protection Code 2012 (the "CPC 2012")**, places certain obligations on the Provider in assessing suitability and affordability of credit. In this regard the Provider is obliged to have regard to an applicant's personal circumstances and financial situation prior to providing or arranging a product or service under **provision 5.16 of the CPC 2012**.

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."

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On the basis of the evidence before me, I accept that the Provider outlined the reasons why the credit application was not approved on **30 June 2015** to the Complainants.

The First Complainant and the Provider met on **02 July 2015**. As part of the investigation of this complaint, the Provider was asked to furnish copies of any contemporaneous notes, records, minutes or memoranda of this meeting. The Provider has not submitted any contemporaneous notes of this meeting but rather has submitted a **statement** from the Provider's Senior Business Advisor who was in attendance at this meeting. This statement outlines as follows:

"I met with [the First Complainant] on 02 July 2015, [the First Complainant] advised that [another named financial services provider] had made an error on the ICB as he had always kept within their agreements."

It appears from the evidence that between **03 July 2015** and **30 July 2015** the Provider and the Complainants were in contact by email and phone and information and documentation with respect to the Complainants' Irish Credit Bureau (ICB) record and income projections for the First Complainant's business were compiled and submitted for the purposes of appealing the decision to decline.

The screenshots from the Provider's **internal system** shows an entry on **30 July 2015** from the Provider's Branch to the Provider's credit department which outlines as follows:

"We would like to appeal the decision to decline on the following basis:

No increase in debt

Sale agreed on both properties

Customer seeking to move from apartment to house to accommodate a young family

Benefit to bank by moving off tracker and also to customer for quality of life

Strong pipeline of sales forecast (available on request),

Highlights of which include

[.....]

Regarding the ICB report please note the following customer explanation:

The [named provider] account was for a car loan. This account is being serviced with monthly payments and will be paid in full by September. The current balance is €150.09. At all times I was in communication with [other provider] when I was under pressure to keep up regular payments. Please see the letter below from the [other

/Cont'd...

provider]. At no time was there any court action pending on this account. I have requested that [other provider] correct the records to the Credit Bureau.

The credit card de[b]t arose when I arranged a short term loan for a friend who was trying to launch a new business. This was to be paid back within 3 months. This unfortunately did not succeed and he was unable to repay the loan. I am currently making payments of €50.00 per month to [named provider] to reduce the debt. My friend who has been unemployed for the past few years has recently got a job and he is optimistic about paying down this debt as he gets on his feet.

No part of this debt is written off. It is our intention to clear this debt in full over time. There were periods when funds were not available due to financial difficulties at the time and payments were missed but I was in communication with the company at all times.

While finances have been tight in my first few years of my new business, I have always prioritised the payments to my mortgage account and kept it paid up to date.

For clarity I must point out that at no time was there any legal action taken as I was engaging with the lenders to agree a payment plan. Also no element of loans were written off or reduced.

I would like to stress I have never defaulted on a loan of any kind

We strongly feel this needs to be looked at and assessed again as there is clearly no increase in risk exposure.”

The screenshots from the Provider’s **internal system** shows an entry on **06 August 2015** by the Provider’s credit department which outlines as follows:

“Your appeal has been referred to two senior managers and the original decline decision stands:

- Not clear why applicants has such a poor repayment record in 2014 with bureau suggesting legal action pending when they have 42k savs listed.
- Note existing mortgage payments does not operate on standard DD basis but paid by cash, which is not satisfactory.
- Also not clear they need to move from [property] to [property]. They could secure satisfactory home for much lower borrowing requirement within criteria at c 150k.

Decline upheld at this level need to consider lower amount, to reduce overall mortgage level.”

The Provider's Branch representative wrote to the Complainants by email on **07 August 2015**, outlining the reasons for the decline. The representative outlined as follows:

"Unfortunately, the appeal had been declined by our mortgage underwriters therefore I am escalating the appeal to our Regional Manager for his support.

...

If you would like to give feedback on these comments, please come back to me by email to allow me to forward them on to our Regional Mgr."

I accept that the Provider was entitled to reach the decision that the Complainants' application did not meet its lending criteria and the Provider again outlined its reasons to the Complainant for refusing to provide the credit requested under **provision 4.24** of the **CPC 2012**.

The First Complainant sent an email to the Provider on **09 August 2015**, outlining details with respect to their savings, their record with the ICB and payment of the mortgage by direct debit. The First Complainant expressed dissatisfaction with the delay in processing the mortgage application. The Provider's Branch representative acknowledged the Complainants' email on **10 August 2015** and informed the Complainant by email on **14 August** that the Branch Manager was meeting with the Regional Manager the following Monday.

It appears from the evidence that the Provider and the First Complainant met on **18 August 2015**. The **statement** from the Provider's Senior Business Advisor records as follows:

"Myself and the Banks Branch Manager met with [the First Complainant] on 18 August 2015 and advised him [of] the appeal decision. We advised the First Complainant that the Banks Regional Manager would not be supporting a further appeal of the Banks decision. [The First Complainant] advised that he was very keen and anxious to appeal the Banks decision and after a long meeting discussing his case, we agreed to further attempt to appeal to the Banks Regional Manager."

The Provider's Branch Manager wrote to the Complainants by email on **19 August 2015**, and outlined as follows

"Can you please respond to the following concerns:

1. *There's a reliance on future projections this year and next re income which is totally outside credit policy – can you allay these concerns?*

/Cont'd...

2. *Naturally incur additional travelling expenses, high LPT, and living costs moving to a property of this size*
3. *Don't appear to have regular savings*

You will be aware that we discussed ICB report also.

A suggested proposal here would be to clear the short term debt and complete 12 months on Direct Debit on the mortgage. It would also help if we can see an addition to their savings over this time-frame.

The First Complainant responded by email on **20 August 2015** setting out a detailed response to the concerns raised by the Provider. The email concluded:

"As you can see we are trying to be as constructive as possible and address all and every concern that has been raised by the Banks underwriter.

For all of the reasons outlined above (which should be considered in addition to all the information previously supplied) I respectfully submit that it is right and appropriate for [the Provider] to port the mortgage to the new property and I would invite you to do so without delay, please."

It appears from the evidence that between **26 August 2015** and **11 September 2015**, the First Complainant and the Provider were in email communication with respect to the progress of the application and the First Complainant expressed dissatisfaction with the delay in progress.

The **statement** from the Provider's Senior Business Advisor records as follows:

"[The] further information was again forwarded to the [Provider's] Regional Manager and after a further review, the [Provider's] Regional Manager decided against appealing the [Provider's] decision to decline.

The [Provider] met [the First Complainant] again on 17 September 2015 to advise him that the Banks Regional Manager decided against appealing the Banks decline decision. [The First Complainant] brought his financial advisor to the meeting and we explained to him that the [Provider] could not sanction the proposal as it stood."

The First Complainant takes issue with the conduct of the meeting that took place on **17 September 2015**, in that, he submits that the Provider's Branch Manager was unwilling to "explain or elaborate on the decision, how it was reach[ed] or how the income multiples were applied to arrive at the decision" nor was he willing to comment on the Complainants' previous suggestions "of guarantors or cash placed on deposit".

/Cont'd...

I accept that the Complainants were frustrated with the decision that the Provider's Regional Manager would not support a further appeal against the decision to decline the Complainants' application for credit in **September 2015**. However it is important for the Complainants to be aware that the Provider's processes required that the Regional Manager had to give support before a second appeal could be submitted to the Provider's Credit Department. The Provider is entitled to put in place its own procedures for appeals against rejected credit decisions. There was no obligation on the Provider to provide the Complainants with the specific underlying information that they sought in the meeting with the Provider on **17 September 2015**.

The Complainants submit that the Branch Manager informed them in the meeting of **17 September 2015** that it would be a "*waste of time*" to raise an official complaint with either the Provider or the Financial Services Ombudsman. The Provider rejects that the Complainants were informed it would be a "*waste of time*" to raise an official complaint with either the Provider or this office. I am not in a position to determine whether this was something that was said by the Provider's representative in the absence of contemporaneous evidence from that meeting. However in any event I note that the Complainants did in fact proceed to raise a complaint with the Provider on **24 September 2015** and ultimately to the Financial Services Ombudsman on **30 November 2015**, so even if it was said, no prejudice has arisen to the Complainants.

Overall 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.

There is no evidence that the Provider acted in a manner that was unreasonable, unjust, oppressive or improperly discriminatory in declining the application for credit or in its dealings with the Complainants. The Provider was entitled to decline the application in circumstances where it was of the view that there were concerns surrounding the suitability and affordability of credit. These are matters that are within the Provider's commercial discretion. The evidence shows that the Provider's Branch Representatives had assisted the Complainants and were supportive of their appeal to the Provider's credit department and then ultimately in their engagements with the Regional Manager, to seek approval to submit a second appeal.

The evidence does not support the Complainants position that the Provider “constantly changed the goal posts and reasons for declining” and “wanted to find reasons to decline mortgage and deliberately earmarked on a journey of issuing us with a ‘slow No’ perhaps hoping and assuming that we would just go elsewhere”. The evidence shows that the Provider engaged with the Complainants at all stages of the application process, the appeal process and in seeking the Regional Manager’s approval to make a second appeal. The Provider was entitled at each stage of the process to reach the decision that the Complainants’ application did not meet its lending criteria.

For the above reasons, I do not uphold this complaint.

Conclusion

My Preliminary Decision is that this complaint is rejected, pursuant to **Section 60(1)** 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**

30 April 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—

- (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.