An tOmbudsman Seirbhísí Airgeadais agus Pinsean
Financial Services and Pensions Ombudsman

Decision Ref:	2020-0205
Sector:	Banking
Product / Service:	Repayment Mortgage
Conduct(s) complained of:	Refusal to transfer mortgage into sole or joint names Delayed or inadequate communication Complaint handling (Consumer Protection Code) Dissatisfaction with customer service Refusal to grant mortgage
Outcome:	Substantially upheld

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

This complaint concerns a joint mortgage loan account held by the Complainants. The First Complainant and the Second Complainant were in a relationship at the time they initially entered into the joint mortgage loan account. The relationship between the Complainants broke down. As a result, the First Complainant, with the consent of the Second Complainant, sought to have the Second Complainant removed from the mortgage loan account and to have the entirety of the mortgage loan account transferred into the First Complainant's sole name.

The mortgage loan was held on a tracker interest rate.

The Complainants' Case

The Complainants took out a mortgage loan account with the Provider on **30 April 2007**.

The First Complainant submits that on **7 June 2016**, during a telephone call with a representative of the Provider, he was told that in general the Provider was agreeable to having *"someone removed off the tracker without it affecting the remaining borrower"* and the timeline to complete the process would be 6-8 weeks.

The First Complainant contends that he submitted an application to the Provider to remove the Second Complainant from the Complainants' mortgage loan account and transfer the entirety of the mortgage loan account into his sole name on **14 August 2016**.

The First Complainant submitted a formal complaint to the Provider on **1 November 2016**, having received no *"meaningful update"* on the status of his application despite telephoning the Provider on four occasions. The First Complainant submits that on foot of the formal complaint, his application was then prioritised, but he was told the process could take up to *"12 months"*.

The First Complainant states that he was informed by the Provider on **8 November 2016** that his application had been declined because:

- It did not make commercial sense for the Provider to release one party to the borrowing; and

- The initial mortgage loan as granted related to a family home and as this would not be the case going forward, the pricing would not remain the same.

The First Complainant states that he requested the Provider furnish him with this information in writing along with the reasons for the declinature.

The First Complainant submits that the Provider issued correspondence on **13 November 2016** advising him that his application had been declined but that it did not include the reason(s) for the declinature.

The First Complainant contends that he requested a review of his application on **31 January 2017**, on the basis that he would move into the property, therefore making it his principal private residence, once the application had been completed. In this letter, the First Complainant states that he was told on the telephone that, the fact it would not be his principal private residence, was the reason why his application had initially been declined. The First Complainant states that the Provider informed him on **7 February 2017** on a telephone call that his application was still being declined for the sole reason that the Provider *"would not wish to release one party to the borrowing as this would not make commercial sense"*.

The Complainant states that on **13 February 2017**, he received a formal response in relation to his application wherein the Provider gave a further reason for the declination stating that it was *"no longer in a position to offer new loans or mortgages to borrowers"*.

On **28 February 2017**, the First Complainant submitted two queries to the Provider. Firstly, he asked the Provider to confirm whether it had granted applications to remove parties from existing mortgages to any other personal customers. Secondly, if the Provider had indeed granted applications to other personal customers to remove parties from existing mortgages, the First Complainant queried what the difference between those customers and the First Complainant was.

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On **9 May 2017**, the First Complainant states that he received a response from the Provider stating that it was not *"normal practice"* to remove one party from a loan agreement and that it was not in a *"position to discuss any other customer cases"*.

On **22 October 2017**, the First Complainant wrote to the Provider re-iterating many of the points made above and also stating that he was *"still extremely unsatisfied with the way that* [the Provider] *treated* [him] *as a customer"*.

The First Complainant states in the submissions accompanying his complaint form that *"he does not believe that* [the Provider] *treated* [his] *application fairly and consistently with other customers and the main reason* [the Provider] *declined* [his] *application was due to the tracker rate"*.

The First Complainant states that in his application to the Provider he demonstrated strong affordability as a sole borrower on the mortgage and in fact his sole application's affordability was stronger than the affordability demonstrated by both Complainants at the point of the original loan decision. He states that his sole mortgage would be well within the Central Bank guidelines for lenders and that the Provider's representative recommended the loan for approval to the Provider's credit committee.

The First Complainant also states that it was confirmed to him in multiple phone conversations with representatives of the Provider in **May/June 2016** and **November 2016** that applications similar to his had been approved for other customers. Therefore, the First Complainant states that, given his affordability, he cannot understand how the Provider would not approve his application as the reason provided for declining his application would apply to the majority, if not all, similar applications.

The First Complainant further submits in the documentation accompanying his complaint that *"during the course of the application there were significant delays and confusing communication during the process"*.

The First Complainant made further submissions to this Office on **1 March 2020** in response to the submissions made by the Provider in respect of the complaint. In these submissions the First Complainant states that:

- The Provider has *"used multiple reasons for declining* [his] *application and* [he does not] *believe that any of them are clear or transparent"*. The First Complainant states that in all applications to remove a party from a joint mortgage account, a provider will have to release one party on the borrowing. Therefore, the First Complainant states that if the Provider's policy in all cases is that *"it would not wish to release one party to the borrowing as this would not make commercial sense"* (credit application documentation dated **3 November 2016**) and that the Provider relies *"on both parties for their liability in line with their original facility sanctioned and facility letter issued"* (credit application documentation dated **6 February 2017**), then the First Complainant should have been informed of this prior to submitting his application as said application was bound to fail.

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Contrary to the statements in the credit application document dated **3 November 2016** and **6 February 2017**, the First Complainant points to the telephone conversation he had with a representative of the Provider on **1 November 2016** which he states demonstrates that there are *"clearly some customers whose applications were approved"*;

- In its Final Response Letter dated **13 February 2017**, the Provider states that *"Following the* [Provider's] *withdrawal from the personal and business banking market in Ireland,* [the Provider] *are no longer in a position to offer new loans or mortgages to borrowers. By asking* [the Provider] *to remove* [the Second Complainant's] *name from the mortgage, you are asking that the Bank to provide you with a mortgage in your sole name; and for the reasons outlined above they are not in a position to fulfil this request"*. The First Complainant states that this is not in line with the rationale provided in the credit application documentation dated **3 November 2016** and **6 February 2017** and it is also not in line with the First Complainant's conversations and interactions with the Provider's representatives;

- In its letter to the First Complainant dated **17 February 2017**, the Provider stated that the reason for declining the application was that the Provider wished to continue *"to rely on both parties for their liability with the original facility sanctioned and facility letter issued"*. The First Complainant states that this rationale contradicts the Provider's Final Response Letter;

- In its letter to the First Complainant dated **9 May 2017**, the Provider stated that it is *"not normal practice to remove one party from a loan agreement"*. This response, the First Complainant submits, reverses the Provider's position as outlined in its Final Response Letter dated **13 February 2017** and also indicates that in certain circumstances the Provider does remove one party from the loan agreement and therefore set up new loan agreements. He points out that this contradicts the rationale provided on **3 November 2016**, **6 February 2017** and **17 February 2017**;

- Despite all the communications between the parties the Provider has not provided the criteria for making the application approval decision to him. Therefore, he states that *"he has not been provided with a clear and transparent reason for* [his] *application being declined and* [he does] *not believe that* [his] *application has been declined fairly"*;

- The only reason why he believes the Provider would have cancelled his application *"was due to the tracker rate of 0.51% that* [he] *had on* [his] *account"*.

The First Complainant in the attachment to his Complaint Form, states that he is *"a little unsure about how* [the Provider] *can make this situation right"*. He states that as a result of the declination of his application, the only viable option that was agreeable to both him and the Second Complainant was to sell the property and this is ultimately what happened in **December 2017**. He states that this decision caused significant stress, strain and duress for both Complainants.

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The First Complainant states that if the mortgage had been transferred into his own name in **November 2016** he would have had a mortgage of approximately €210,000 on a tracker rate of .51% above the ECB rate for a term of 15 years (circa 184 repayments).

He states that he investigated the option suggested by the Provider to refinance with another provider and the best rate he could get for a similar amount was 3.3% and that this amounted to an interest rate which was a multiple of 6.47 times the interest rate on the tracker rate. The First Complainant states that this would have amounted to extra interest payments of approximately €88,579 over the 15 year period remaining of the mortgage.

The First Complainant further states that if his application had been approved in **November 2016**, this would have meant that the property would have transferred into his sole name. He submits that the valuation of the property was €338,000 in **May 2016** and the property was sold for €402,000 in **December 2017**. The First Complainant states that he only received 50% of the capital appreciation of the asset whereas he would have received the full benefit (€64,000) if the application had been accepted. However, the First Complainant accepts that it is unlikely that he would have sold the property in **December 2017** in that context.

Finally, the First Complainant submits that *"the stress, strain and pressure of dealing with the situation was significant and would have been avoided if the application had been approved and processed in a timely manner"*. The First Complainant states that this stress and strain had an effect on the relationship between the Complainants which, despite their breakup, had up until **November 2016** been very amicable. As a result of the application being denied, the First Complainant states that this amicable relationship broke down.

The Provider's Case

In its Final Response Letter dated **13 February 2017**, the Provider states that the First Complainant's initial application was declined for the following reasons:

- The Provider did not wish to release one party to the borrowing as this would not make commercial sense;

- The asset and pricing relate to a family home approval which is now not the case, and the pricing would not remain as present if the mortgage was changed to a sole name.

The Provider also acknowledges that when it was denying the initial application it suggested that the First Complainant might seek to *"refinance with another provider"* and stated that it would rely fully on both borrowers *"in the meantime"*. The Provider also accepts in its Final Response Letter that it had not included the reasons for the declinature of the First Complainant's application in its letter dated **13 December 2016** and apologised for this omission.

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The Provider submits that it reviewed a further application made by the Complainants on **31 January 2017** and contacted the First Complainant on **7 February 2017** by telephone to advise that this application was also declined for the reasons outlined in the First application and that the Provider would continue to rely on both parties for their liability in line with the original facility sanctioned and facility letter issued.

The Provider also states in its Final Response Letter dated **13 February 2017** that *"the mortgage was signed by both* [the First and Second Complainant] *and by doing so* [both Complainants] *agreed to be bound by the terms and conditions of same. Following* [the Provider's] *withdrawal from the personal and business banking market in Ireland,* [the Provider] *are no longer in a position to offer new loans or mortgages to borrowers"*.

In its Final Response Letter dated **13 February 2017**, the Provider strongly rejects the allegation that it is effectively removing the tracker mortgage rate from the First Complainant for its own financial benefit and states that it will continue to honour the tracker mortgage agreement that was agreed with the Complainants.

In its submissions to this Office dated **23 January 2020** in relation to the complaint, the Provider states that the reason for the initial declination of the First Complainant's application was explained to the First Complainant by telephone. The Provider submits that the First Complainant was advised over the telephone that the application was declined for the following reasons:

- The Provider did not *"believe that it made commercial sense, as it would weaken the* [Provider's] *security if they were to remove one party from the home loan"*.

- The property was not a family home so even if the Provider were to approve the application, the Provider would increase the rate.

In its submissions to this Office, the Provider again accepts that when it wrote to the First Complainant on **13 December 2016** it omitted the reasons for the decline and accepts that this was not acceptable. The Provider again apologised for this.

The Provider further accepts that it took 10 weeks from receiving the First Complainant's application before his application was progressed and that this led to the First Complainant making a complaint. The Provider apologised for this delay but states that it does not believe that this caused any financial loss to the First Complainant.

The Provider states that the complaints lodged by the First Complainant were answered in full within 5 working days.

The Provider states in its submissions to this Office dated **29 January 2020** that it exercised *"its commercial discretion and made the decision not to sanction a new home loan in the sole name of* [the First Complainant] *in 2016 and 2017"*. The Provider is *"happy to stand by this decision and do not feel this decision was unfair"* to the First Complainant.

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The Complaints for Adjudication

The complaints in this matter are that:

- The Provider improperly and unfairly declined the First Complainant's application to transfer the mortgage loan into the First Complainant's sole name and remove the Second Complainant from the joint mortgage loan account;

- The Provider failed to provide clear and transparent reasons for declining the First Complainant's application;

- The underlying reason for the Provider refusing to grant the First Complainant's application was due to the joint mortgage loan account being on a tracker interest rate;

- The Provider poorly managed the First Complainant's application in respect of the Complainants' mortgage loan account and its communication relating to the application.

Decision

During the investigation of this complaint by this Office, the Provider was requested to supply its written response to the complaint and to supply all relevant documents and information. The Provider responded in writing to the complaint and supplied a number of items in evidence. The 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 6 May 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.

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Following the issue of my Preliminary Decision, the Complainants made a further submission to this Office under cover of their e-mail dated 7 May 2020, a copy of which was transmitted to the Provider for its consideration.

The Provider has not made any further submission.

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

As a preliminary point, I note that the letter from the Provider initially declining the First Complainant's application was actually dated **13 December 2016**, rather than **13 November 2016** (as submitted on the Complaint Form). However, this has no material impact.

I note that the joint mortgage loan agreement entered into between the Provider and the Complainants on **30 April 2007** states that in the event of default the Provider *"shall be entitled to require full repayment of the Loan and accrued interest and all other monies owing under the Agreement…"* (Clause 15).

At the outset therefore, it is important to stress that in the event of a default in payment under the joint mortgage loan account, the Provider would have had recourse as against both of the Complainants. It is also important to stress that the Provider is a commercial entity and is therefore entitled to make commercial decisions and exercise its commercial discretion in respect of the security it requires in respect of borrowing or the terms on which it will advance a new loan. Therefore, in the normal course of events, the Provider is entitled to make the decision to retain the security provided by preserving the accountability of both Complainants to the loan.

This Office will only interfere with the commercial discretion of a financial service provider where it is considered that the exercise of that discretion is unlawful, unreasonable, unjust, oppressive or improperly discriminatory manner in accordance with the ***Financial Services and Pensions Ombudsman Act 2017***. In order to ascertain the manner in which the Provider came to its decision to deny the Complainant's application, I have given careful consideration to the three A4 pages of log notes provided to this Office in respect of communications between the First Complainant and the third party administrator for the loan account from **4 May 2016** to **9 May 2017** and the further call notes in respect of telephone calls between the First Complainant and the third party administrator. I have considered these notes and records in conjunction with the 34 audio recordings of telephone conversations between the First Complainant and representatives of the third party administrator acting on behalf of the Provider, as well as the various written correspondence exchanged between the parties.

During a telephone conversation between the First Complainant and a representative of the third party administrator dated **4 May 2016**, the audio recording submitted to this Office clearly evidences that when asked by the First Complainant whether he would remain on a tracker mortgage if the Second Complainant is removed from the joint mortgage loan account, the representative of the third party administrator states *"that would not change"*.

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During the next telephone conversation the First Complainant had with a representative of the third party administrator on **7 June 2016**, he was initially told by the representative that *"you will lose the tracker with this…it is a new agreement, a new loan…let me just check….I mean there are no trackers available anymore…my understanding is that you would be transferred on to* [the Provider's] *variable rate"*. However, after consultation with her manager, the representative of the third party administrator changed her position in respect of the tracker rate and the First Complainant was advised that *"at the moment* [the Provider] *are agreeing to have someone removed from the tracker without effecting the remaining borrower…but this is not set in stone"*. I note that the log note in respect of this telephone call states that the First Complainant was *"advised that he would not lose his Tracker rate, if the application was approved"*. There is also a more detailed note regarding this telephone call furnished by the Provider which also states that the Provider would allow the First Complainant to keep the tracker but *"this is not a guarantee – all will be outlined in loan offer letter if app is accepted"*.

I note that a representative of the third party administrator contacted the First Complainant by telephone on **8 November 2016** and stated that his application was being declined. The representative stated that *"it does not make commercial sense"* for the Provider to accept the application. The representative also stated that *"it weakens the security taking one person off"* and because the First Complainant is not living at the property, the property is not a family home and therefore the Provider would increase the rate of interest applied to the loan. The First Complainant very clearly requested twice during the call to receive this declinature information in writing.

I note that during a telephone conversation on **10 November 2016**, the First Complainant was informed by a representative of the third party administrator that, in respect of tracker rate mortgages, the representative had "*ever only seen* [the Provider] *approve these on a principal private residence"*.

I note that the initial letter declining the application, dated **13 December 2016** stated:

> *"You recently applied for a transfer the* (sic) *above mortgage into your sole name. Unfortunately, your application has not been successful.*
>
> *If you would like some more information or wish to speak to us concerning your application please contact us…"*

I note that the Provider accepts in its Final Response Letter that it did not include the reasons for the declinature of the First Complainant's application in its letter dated **13 December 2016** and apologised for this omission. The reasons are contained within the credit application document dated **3 November 2016**, namely that:

- The Provider *"would not wish to release one party to the borrowing as this would not make commercial sense"*; and

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- The *"asset and pricing relate to a family home approval which is not now the case and pricing would not remain as at present if mortgage was changed to sole name".*

I note that the above reasons for declining are given, despite the fact that the comments section of the credit application document recommends approval of the application given the *"regular and reliable income"* of the First Complainant, his *"good track record"*, the fact that the LTV for the property is 61%, the DSR is 26% and the fact that the amount of borrowing is only a multiple of 2.09 times the First Complainant's salary.

I note that on **31 January 2017**, the First Complainant rang the third party administrator and informed a representative that he planned to move into the property to enable him to take on the mortgage on his own and still maintain the tracker rate. This led to a Second application being made to remove the Second Complainant from the mortgage. The only difference between the First and Second application was that the property would now be a principal private residence.

I note that on **7 February 2017**, the First Complainant was informed by telephone that his application was again declined for the reason that the Provider *"relies on both parties for the liability in line with the original facility sanctions"*. During this call the First Complainant noted that the decision was no longer related to the principal private residence and requested a written explanation of that rationale. Furthermore, during this call, the First Complainant stated his belief that the Provider is *"essentially forcing* [me] *off a tracker mortgage"*. The representative of the third party administrator replied to this with the comment: *"yeah, there's nothing I can do"*. I note that the First Complainant then reiterates his belief that the Provider is forcing him off a tracker mortgage due to his changed personal circumstances (breakdown of the relationship with his girlfriend) and the Provider is doing that for its own financial advantage. The First Complainant emphasises during this call that he is well within the financial limits, as set out by the Central Bank of Ireland, to afford this mortgage and therefore the argument made by the Provider concerning a heightened risk by removing the Second Complainant from the mortgage does not make sense.

I note that in its Final Response Letter dated **13 February 2017**, the Provider gives the reasons for this Second declination being that *"the mortgage was signed by both* [the First and Second Complainant] *and by doing so* [both Complainants] *agreed to be bound by the terms and conditions of same. Following* [the Provider's] *withdrawal from the personal and business banking market in Ireland,* [the Provider] *are no longer in a position to offer new loans or mortgages to borrowers"*.

I note that in its letter to the First Complainant dated **9 May 2017**, the Provider stated that it is *"not normal practice to remove one party from a loan agreement"* and in its submissions to this Office dated **29 January 2020** that it exercised *"its commercial discretion and made the decision not to sanction a new home loan in the sole name of* [the First Complainant] *in 2016 and 2017"*.

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In summary therefore, the First Complainant was given the following information in relation to his application:

- Prior to the application on **4 May 2016** and **7 June 2016**: The First Complainant was told over the telephone by the third party administrator that the Provider was agreeable to removing one party from the joint mortgage loan account but that this was not guaranteed. The First Complainant was also told that he would not lose his tracker rate if the application was successful;

- Over the telephone on **8 November 2016**: That his application was denied due to the Provider not wanting to reduce the number of individuals who it could enforce its security against and because the property was not the First Complainant's principal private residence;

- Over the telephone on **10 November 2016**: That the third party administrator had only ever seen these types of applications granted when the property was the principal private residence of the applicant;

- In writing on **13 December 2016**: No reasons for the declination were given;

- Over the telephone on **7 February 2017**: That the First Complainant's Second application was being denied due to the Provider not wanting to reduce the number of individuals against whom it could enforce it security;

- In writing on **13 February 2017**: That the First Complainant's Second application was being denied due to the Provider not wanting to reduce the number of individuals against whom it could enforce the security and also that the Provider was no longer able to offer new loans or mortgages to borrowers following its withdrawal from the banking market in Ireland;

- In writing on **17 February 2017**: That the First Complainant's Second application was being denied due to the Provider not wanting to reduce the number of individuals against whom it could enforce the security and also due to the decision as outlined in the original application;

- In writing on **9 May 2017**: That it is not the normal practice of the Provider to remove one party from the loan agreement; and

- In writing on **29 January 2020**: That the Provider was exercising its commercial discretion not to grant the application.

The evidence supplied to this Office includes the following documents:

- The credit application document dated **3 November 2016**: The Provider was declining the application because it would not make commercial sense to release the Second Complainant and the property was not a family home; and

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- The credit application document dated **6 February 2017**: The Provider wants to continue to rely on both parties to enforce its security.

The communications set out above make it clear that the Provider has given multiple, sometimes conflicting, reasons for the declination of the First Complainant's application.

I believe there were serious failings in the Provider's communications with the Complainant and the information given to him. This caused considerable frustration and inconvenience.

If the Provider's normal practice was to not remove a party from a joint loan agreement this should have been communicated to the First Complainant from the outset. Instead, the First Complainant was clearly told by the third party administrator that the Provider was generally agreeable to applications of this nature, albeit that it was not guaranteed.

The comment from the third party administrator that the Provider was generally agreeable to applications of this nature is impossible to reconcile with the statement made by the Provider in writing on **13 February 2017** that it was no longer able to offer new loans or mortgages to borrowers following its withdrawal from the banking market in Ireland.

The First Complainant correctly points out that if the Provider has *"a normal practice"* not to remove a party from a loan agreement, then that indicates that in certain circumstances the Provider does in fact remove one party from the loan agreement and therefore it does still set up, at least some, new loan agreements. This clearly conflicts with the statement as made by the Provider in its letter of **13 February 2017**. Furthermore, if the Provider had fully withdrawn from the Irish market then this should have been communicated to the First Complainant from the outset or at the earliest possible date that the Provider was aware that it was not in a position to offer new loans.

The telephone conversation on **10 November 2016**, understandably led the First Complainant to believe that making the property his principal private residence would have a material effect on his application. This is not addressed by the Provider in any of its correspondence or submissions.

The credit application documentation dated **3 November 2016** and **6 February 2017** makes no mention of the Provider withdrawing from the personal banking market in Ireland as a reason for declining the application.

The letter dated **17 February 2017** maintains that the original reasons for the declination still remain. The original reasons included the fact that the property was not the family home/principal private residence of the First Complainant which clearly could no longer be a reason for declinature at the time of the issuing of this **17 February 2017** letter.

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If the Provider's policy is that *"it would not wish to release one party to the borrowing as this would not make commercial sense"* (credit application documentation dated **3 November 2016**) and that the Provider relies *"on both parties for their liability in line with their original facility sanctioned and facility letter issued"* (credit application documentation dated **6 February 2017**), then the First Complainant should have been informed of this prior to submitting his application as that application was bound to fail and would appear to have been a pointless exercise.

I note that in its submissions to this Office dated **29 January 2020**, the only reason the Provider states for declining the application is that it *"exercised its commercial discretion"*. There is no discussion of its normal practice or the fact that it no longer offers personal loans in Ireland. The Provider also does not address the substantive grounds for the declinature in these submissions.

I also note that there is no explanation or rationale given by the Provider as to why some joint mortgage holders would be allowed to remove one party and become sole mortgage holders and why the First Complainant is not allowed to do so in this scenario.

This is particularly noticeable and curious, given the strong financial position and good track record of repayments which the First Complainant holds.

In a post Preliminary Decision submission dated 7 May 2020, the Complainants asked if this complaint could be referred to the Central Bank of Ireland for further investigation. I have not been provided with evidence or information that would point to a systemic issue within the Provider regarding this issue and therefore I do not propose to refer the matter to the Central Bank.

In terms of the customer service and communication throughout the process, the Provider's third party administrator and the Provider itself gave conflicting, unclear, misleading and unhelpful information to the First Complainant in respect of his applications regarding his joint loan account. This was not in compliance with provision 2.3 of the Consumer Protection Code 2012 (as amended) ('the CPC') and meant that the First Complainant wasted a very significant amount of time on applications and communications with the Provider and the third party administrator in circumstances where, it would appear, his application had no prospect of ever being approved.

The Provider's failure to give any reasons for the declinature in its letter of **13 December 2016** and its failures thereafter to give clear reasons for its decision to deny the applications of the First Complainant is also not in compliance with the CPC. In particular, provision 2.1 by not acting *"honestly, fairly and professionally in the best interests"* of the Complainants and 2.6 by not making *"full disclosure of all relevant information…in a way that seeks to inform"* the Complainants.

The Provider also failed in its obligation under provision 2.2 of the CPC by not acting promptly to assess the Complainant's initial application.

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In the interests of completeness, I accept that the Provider did act promptly to deal with the complaints raised by the First Complainant.

Therefore, while I accept that the decision by the Provider to decline the First Complainant's application is a commercial one over which the Provider enjoys discretion, I find that the manner in which the Provider exercised this discretion and in particular, the manner in which it interacted and communicated with the Complainants before, during, and after the First Complainant made his credit application, was most unreasonable.

In summary, I accept that:

- It was within the Provider's commercial discretion to decline the First Complainant's application to transfer the mortgage loan into the First Complainant's sole name and remove the Second Complainant from the joint mortgage loan account;

- The Provider failed to provide clear and transparent reasons for declining the First Complainant's application; and

- The Provider poorly managed the First Complainant's application in respect of the Complainants' mortgage loan account and furnished misleading information and was responsible for poor communication and customer service throughout the process.

For the reasons set out above, I substantially uphold this complaint and direct the Provider to pay compensation to the Complainants in the sum of €12,000.

Conclusion

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

Pursuant to ***Section 60(4) and Section 60 (6)*** of the ***Financial Services and Pensions Ombudsman Act 2017,*** I direct the Respondent Provider to make a compensatory payment to the Complainants in the sum of €12,000, 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.***

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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

29 June 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.