



<u>Decision Ref:</u>	2021-0126
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Personal Loan
<u>Conduct(s) complained of:</u>	Refusals (banking) Delayed or inadequate communication Dissatisfaction with customer service
<u>Outcome:</u>	Partially upheld

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

This complaint relates to a student loan application.

The Complainants' Case

The Complainant states that she booked an appointment in her local branch to discuss a student loan. The Complainant states that she met with an agent employed by the Provider, who issued advice in relation to the paperwork she would be required to submit with her application for a student loan. The Complainant states that she submitted the necessary paperwork as requested and applied for a student loan to the value of €6,000 in July 2018.

The Complainant states that she was required to provide details of the course as part of her application and informed the Provider that the course was part-time, over a four-year period. The Complainant states that as part of her Masters degree she was required to complete up to 40 hours of practical elements, attend a monthly study group as well as build up to 39 hours of session work specific to the course on top of completing placement visits and other relevant supervision. The Complainant states that having advised the Provider of these relevant details, she was approved and offered the €6,000 loan as requested.

The Complainant states that the loan was set up so that she would make weekly repayments of €50 from July 2018 onwards. The Complainant states that she has not missed a single repayment nor has she paid monies in advance in order to reduce the length of time or the interest rates. The Complainant states that she started her Masters in October 2018 having paid the first year fees of €6,000 in August 2018.

The Complainant states that ahead of her second year, she contacted the Provider in March 2019 with regard to topping up her student loan. The Complainant states that she met with a new agent of the Provider and completed a new application. The Complainant received an email from the Provider on 4 April 2019 which informed her that she was not eligible for the loan. The Complainant states that she was informed that her loan was declined on the basis that her course was part-time. She states that the agent agreed to contact her colleague who had assisted the Complainant with her first loan application. The Complainant was informed again by the Provider that her application for the top-up loan was declined on the basis that the course was part-time and the Complainant was, at this stage, informed that her initial loan was approved due to an oversight by the previous agent.

The Complainant states that her loan application was resubmitted and was once more rejected.

The Complainant states that the course criteria was the same as the year prior and that the Provider was fully aware from the time of her first application that her course was part-time. The Complainant contends that she previously submitted all the correct information and was subsequently approved for the loan and she cannot understand why she has been making weekly repayments with interest on a loan she was apparently never entitled to.

The Complainant states that the first €1,000 deposit for second year fees was due on 26 April 2019. The Complainant raised a complaint with the Provider on 9 April 2019 and she received a response acknowledging the Provider's mistakes.

The Complainant contends that the Provider has failed to take responsibility for its error and has failed to resolve the issue. She states that she was previously advised that not only was she entitled to the loan but also that there was a "top-up" option in the loan. The Complainant submits that the apology from the Provider falls short.

The Complainant also points out that the Provider, in its final response letter, asserts that she does not qualify for the loan because she was in full-time employment and it is silent on the issue of her course being part-time. The Complainant makes the point that the Provider was furnished with information stating that she was in full-time employment and her course was part-time as part of the original application for the loan.

The Complainant submits that as a result of the Provider not approving her loan, she has had to request extra hours work to cover the course fees and this is placing pressures and stress on her. The Complainant states that she registered for this course on the basis that she qualified for a student loan which could be topped up year-on-year. The Complainant states that as a consequence of the Provider's decision to decline her loan for the second year, she is facing the possibility that she cannot continue her studies.

The Complainant rejected an offer of €400 made by the Provider stating:

"I do not believe €400 is a fair and reasonable amount for several reasons.

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The interest is over €420, the length of time this has gone on, the fact I had to go to a separate financial institution to take out a second loan (which is what I wanted to avoid in the first place by topping up the original loan), the fact they did not spot this error and that I had to bring it to light, the run around I was given for reasoning and unclear communication, the fact they did not attempt to reach out to me to offer me an alternative product/advice in April 2019 when I thought I could not continue my studies due to their error and left me to solve an issue they created for me by myself while working more hours and studying part time."

The Complainant wants the Provider to compensate her for the inconvenience, stress, shock and upset of the situation.

The Provider's Case

The Provider, in its final response letter of 29 April 2019, sets out that the Complainant's top-up loan application was declined because she was in full-time employment and therefore did not meet the loan criteria.

The Provider goes on to explain to the Complainant that her original loan application of July 2018 was in fact processed incorrectly due to an oversight on the part of the Provider's staff member who was processing the Complainant's application. The Provider explains that the application was "system approved" but had it been correctly referred to the Provider's underwriters, it would have been highlighted that the Complainant did not meet the criteria for this facility due to her "being in full-time employment".

In its response to this office, the Provider states that the loan, the subject matter of the complaint, is a student loan and that postgraduate loans are only available to graduates who are undertaking a one-year full-time course. The Provider states that the Complainant's course was part-time and accordingly, the Complainant was not eligible for a postgraduate loan but that this was granted in July 2018 due to an administrative error or oversight.

The Provider explains that the top-up loan application was properly processed and was correctly refused on the basis that the Complainant did not qualify for the original loan as the course was not a full-time course.

The Provider states that it is satisfied that it has reached the correct conclusion in declining the Complainant's top-up loan application. The Provider goes on to explain that the terms and conditions with regard to student lending state that in the case of a postgraduate course, which the Complainant was undertaking, the course must be a full-time course in order to be eligible for a student loan. The Provider states that based on the information that was provided by the Complainant, the application for the original loan was approved by the Provider's agent "using his discretion to approve the original loan rather than referring the application to the Provider's underwriter". The Provider submits that if the original application had been referred to the underwriter, the original loan would not have been approved.

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The Provider states that it is satisfied that it has complied with each of its obligations under the Consumer Protection Code 2012.

In its submission to this Office dated 9 July 2020, the Provider states:

“The Provider submits that it has made a number of efforts to resolve this complaint since 09 April 2019, including an offer of €400.00 in full and final settlement as set out in letter from the Provider to the Complainant dated 20 March 2020. The Provider submits that the offer of €400.00 in full and final settlement of this matter is fair and reasonable with respect to the circumstances surrounding the error that led to the approval of the original loan. The Provider notes that the cost of the credit as set out in the loan offer dated 09 July 2018, to include interest and charges, is €420.70.”

The Complaint for Adjudication

The complaint is that the Provider has wrongfully, unlawfully and unreasonably declined the Complainant's top-up loan application. In addition, the Complainant asserts that the Provider made representations to her that a top-up loan facility was part of the initial loan approval.

The Complainant also complains that the Provider has failed to address the consequences of the errors and has failed to adequately resolve the Complainant's complaint and has proffered poor 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 Complainant was given the opportunity to see the Provider's response and the evidence supplied by the Provider. A full exchange of documentation and evidence took place between the parties.

In arriving at my Legally Binding Decision, I have carefully considered the evidence and submissions put forward by the parties to the complaint.

Having reviewed and considered the submissions made by the parties to this complaint, I am satisfied that the submissions and evidence furnished did not disclose a conflict of fact such as would require the holding of an Oral Hearing to resolve any such conflict. 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.

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A Preliminary Decision was issued to the parties on 12 April 2021, outlining my preliminary determination in relation to the complaint. The parties were advised on that date, that certain limited submissions could then be made within a period of 15 working days, and in the absence of such submissions from either or both of the parties, within that period, a Legally Binding Decision would be issued to the parties, on the same terms as the Preliminary Decision, in order to conclude the matter.

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

The Provider has asserted that the Complainant did not qualify for the original loan. It has stated that this is so, on occasion because her course was part-time, and on other occasions because she was working. For these reasons it argues that it was correct to refuse the top-up application.

The Provider has also stated in its response to a question posed by this office that had the Complainant made a personal loan application, which carries a higher interest rate to the student loan, she would have met the eligibility requirements. It follows therefore that the Complainant met the affordability criteria for the student loan.

The Provider's position therefore, is that the Complainant was never eligible for a postgraduate loan because such loans are only available to students undergoing a one-year full-time course. The Complainant was undergoing a four-year part-time course and therefore did not qualify for the student loan. However, the Provider accepts that the Complainant's application was accepted and approved and drawn down. The Provider explains this by stating that its agent did not refer the application to the underwriter but rather he used his discretion.

The Provider was asked, by this office, where and when the Complainant would have had access or sight of the terms and conditions that the Provider is relying on in declining the Complainant's loan application. The Provider responded that the Complainant would have had access to the terms and conditions that the Provider was relying upon, "at all material times" on its website.

The Provider refers to the "Features and Benefits" section of its website, a printout of which is provided in its schedule of evidence submitted to this office. The Provider notes that under the heading 'Eligibility and Important Information', the following information is set out:

- *A postgraduate loan is only available to graduates who are undertaking a 1 year full time postgraduate course in the Republic of Ireland;*
- *The application must be completed and returned to a [Provider] branch;*
- *Loan is designed to cover fees;*
- *Guarantee will be required".*

The actual terms and conditions of the credit agreement appears to be silent on the requirement to be undertaking a one-year full-time postgraduate course.

However, it would appear that the Provider had eligibility criteria involving requirements that applicants for the postgraduate loan be undertaking a one-year full-time postgraduate course in the Republic of Ireland.

On that basis, it would seem the Provider is correct in stating that the Complainant did not meet that criterion.

However, notwithstanding that, the Provider, by its own admission, exercised its discretion and approved the Complainant for the loan and the loan was drawn down. The Provider states that its agent who was processing the application used his discretion to approve the loan without referring the application to the Provider's underwriter. The Provider also highlights that the loan was conditionally approved by the Provider's internal loan application system.

Statements have been provided from the Provider's employees who processed the initial loan application and the top-up loan application respectively. The employee who processed the initial loan application has stated, amongst other things:

"...I checked the account details for the operation of accounts and basis for repayments. I also assessed the guarantor at this point. I then checked that I had the correct paperwork in place. The Complainant submitted confirmation of income from her employer, confirmation of the college course and a guarantee from the Complainant's mother, as well as Anti Money Laundering documents.

The loan application was "score approved" by the loan application system, I double checked the figures and account details that I had input. I had over 2 years lending experience with responsibility for paper loan applications in the branch and had discretion to accept loan applications which the Bank's loan application system score approves. If I felt that an application was border-line for approval, I would send the application to the underwriter to assess the application. However, I felt that the repayment capacity for this application was strong enough to avoid sending the application to the Underwriter as the Complainant had a salary in place as well as a guarantor."

The statement goes on to point out that the Complainant's application was in paper form as all branch submitted applications had to be paper-based.

He then states:

"Based on the information provided, I used my discretion to approve the loan. Had I correctly referred the application to the Bank's underwriter, the loan would not have been approved based on the fact that the Complainant would not be eligible for a postgraduate loan, due to the course not being a full-time course. This is how the error occurred".

The above statement was dated 1 July 2020.

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A statement from the Provider's employee who processed the top-up loan was provided on 7 July 2020.

It states, amongst other things:

"The Complainant provided supporting documentation such as payslips, fees letter, proof of address etc. The application was completed on or about 27 March 2019 and submitted for approval for the top-up loan in the amount of €6,000. On 1 April 2019, the Complainant contacted me as she was contacted by the Provider stating that the figures filled out on the application were incorrect and would need to be higher due to the top-up amount being sought. The Complainant amended the application on 1 April 2019 with the correct figure of €10,400 and this was lodged for approval on 1 April 2019."

The statement then sets out that the loan application was declined as she was not eligible for the loan and this was appealed to the Provider's underwriter.

On 8 April 2019 the underwriter affirmed the previous decision that the Complainant was not eligible for the loan and the Provider contacted the Complainant to advise of the decision.

I will deal firstly with the eligibility criteria for the student loan. It would appear that based on the criterion that was required to undertake a one-year full-time course, the Complainant was ineligible. However, the Provider was asked by this office to identify the relevant terms and conditions relied upon by the Provider in declining the top-up loan application and to clarify these terms and conditions. The Provider's response was that the application was assessed with reference to the Provider's lending guidelines. The Provider expressly states that accordingly, the Complainant was not eligible for the original loan and the original loan should not have been approved or drawn down. The original loan was not assessed by the Provider's underwriter.

However, the Provider has explained that its employee at the time exercised his discretion to approve the loan. Furthermore, a statement has been provided by this employee which states that the Complainant's application was a paper based application in the branch. The employee also states that he had over two years lending experience with *"responsibility for paper loan applications in the branch and has discretion to accept loan applications which the bank's loan application system "score approved"*. He went on to explain that if he felt the application was border-line for approval he would send it to the underwriters but in this case he did not feel it was border-line. He states that based on the information provided *"I used my discretion to approve the loan"*.

The Provider does not dispute or take issue with the fact that this employee had the ability to exercise a discretion in this regard. While the employee does go on to state that *"had I correctly referred the application to the Bank's underwriter, the loan would not have been approved"* and, in hindsight, this may well be the case.

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Based on the foregoing evidence submitted by the Provider, I do not accept that this was simply an administrative error or oversight. This employee had a discretion to approve the loan and he exercised that discretion. That is the evidence put forward by the Provider.

Accordingly, the Complainant was offered the loan and the loan was drawn down and the Complainant continues to repay the loan.

The top-up loan was declined on the basis that the original loan should not have been approved or drawn down. In this case it was assessed by the Provider's underwriters who declined the loan on the basis that the Complainant's course was not full-time and therefore she was ineligible.

The Provider was asked where the Complainant would have had access or sight of the terms and conditions that the Provider is relying on to decline her loan application. The Provider's response is that the Complainant would have had access to its website which deals with the features and benefits of the student loan product.

However, the Complainant had already been deemed eligible for the original loan and had applied to top-up that loan. She would not necessarily have had reasonable cause therefore to check the eligibility criteria online for a loan she had already been deemed eligible for. Nonetheless, she was informed by letter that her top-up application was assessed in line with the Provider's lending criteria and that her application was being declined.

While I accept that the application was deemed not to be eligible on this occasion and that it was a commercial decision for the Provider to take, I believe the Provider could have taken a more reasonable and considered approach, given the circumstances and communication surrounding the approval of the original loan.

The Consumer Protection Code 2012 provides:

GENERAL PRINCIPLES

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

*2.1 acts honestly, fairly and professionally in the best interests of its **customers** and the integrity of the market;*

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

*2.3 does not recklessly, negligently or deliberately mislead a **customer** as to the real or perceived advantages or disadvantages of any product or service;*

*2.8 corrects errors and handles **complaints** speedily, efficiently and fairly;*

2.11 without prejudice to the pursuit of its legitimate commercial aims, does not, through its policies, procedures, or working practices, prevent access to basic financial services; and

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2.12 complies with the letter and spirit of this Code.

It is important to note that there has been no suggestion that the Complainant did not meet the repayment capacity in relation to either her existing loan or the top-up loan. Therefore, notwithstanding that the Provider had the commercial discretion to decline the top-up loan application, I believe a more reasonable approach would have been for the Provider to consider the Complainant's application for a top-up loan in the context of the approval of the original loan and the communications surrounding that loan. Furthermore, I believe it reasonable to expect that the situation the Complainant found herself in, as a result of the original loan approval, should also have been taken into account in the consideration of the top-up loan.

I believe that in granting the Complainant the original loan to facilitate her embarking on her Masters course and then refusing her application for a top-up loan, on eligibility grounds, after having completed the first year based on funding provided by this loan, the Provider did not act with the requisite due skill, care and diligence in the best interest of the Complainant. Furthermore, I believe the Provider did not act reasonably or in the best interests of the Complainant by not applying its self-accepted discretion in relation to the top-up loan application.

I note the Provider offered the Complainant €400 in full and final settlement of the complaint. However, I do not believe this to be adequate given the circumstances of the complaint and the inconvenience caused to the Complainant. While I am unwilling to interfere with the commercial discretion of the Provider by directing it to grant the Complainant the loan she sought, I believe greater compensation is merited. I believe a sum of €2,000 to be appropriate.

For the reasons set out in this Decision I partially uphold this complaint and direct the Provider to pay a sum of €2,000 to the Complainant for the inconvenience caused.

Conclusion

My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is partially upheld, on the grounds prescribed in **Section 60(2)(b)** on the basis that the Provider's conduct was unreasonable in the circumstances of this particular complaint.

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 Complainant, for the inconvenience caused, in the sum of €2,000, to an account of the Complainant's choosing, within a period of 35 days of the nomination of account details by the Complainant to the Provider.

I also direct that interest is to be paid by the Provider on the said compensatory payment, at the rate referred to in **Section 22** of the **Courts Act 1981**, if the amount is not paid to the said account, within that period.

The Provider is also required to comply with **Section 60(8)(b)** of the **Financial Services and Pensions Ombudsman Act 2017**.

The above Decision is legally binding on the parties, subject only to an appeal to the High Court not later than 35 days after the date of notification of this Decision.



**GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

5 May 2021

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.