An tOmbudsman Seirbhísí Airgeadais agus Pinsean
Financial Services and Pensions Ombudsman

Decision Ref:	2021-0291
Sector:	Banking
Product / Service:	Loans
Conduct(s) complained of:	Failure to provide product/service information Delayed or inadequate communication Dissatisfaction with customer service Documents mislaid or lost
Outcome:	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

This complaint concerns the Complainant's application to the Provider for a loan.

The Complainant's Case

The Complainant submits that in **January 2015**, he applied for a stocking loan of approximately **€60,000** with the Provider. The Complainant contends that, when assessing his loan application, the Provider did not consider his income sources from the FRS and the AEOS scheme. The Complainant further contends that the Provider stated that his drawings were high but that it never made any attempt to contact him to query the nature of his drawings.

The Provider states that it made a number of attempts to contact the Complainant's accountant but the Complainant asserts that, having queried this with his accountant, no such attempts were made.

The Complainant says that the Provider would not accept his tracker bonds as security for the loan and he is seeking clarification from the Provider as to why his tracker bonds were deemed inadequate as security, on his first loan application, but it decided that they were adequate for the same loan over a shorter period of time. The Complainant contends that the Provider unreasonably denied his application for a loan with a repayment term of 5 years.

The Complainant states that his loan was approved by the Provider in **February 2015** and that he could not drawdown the money until **April 2015**. The Complainant states that this was an excessive delay and that the Provider did not process the loan application correctly. He says that a deal fell through to purchase some livestock during this period, which he subsequently had to purchase at a higher cost.

The Complainant asserts that the Provider negligently and wrongly prevented him from cashing in his tracker bonds at a branch of the Provider in **March 2015** and that he was told it wasn't possible to cash in his bonds but then subsequently at a later date, the Provider informed him that he was entitled to cash in the bonds.

The Provider's Case

In its final response letter dated **26 July 2016**, the Provider said that the FRS income was included in its assessment of the Complainant's loan application as a gross income amount of €23,777. The Provider further submits that at the time of the Complainant's loan application, the AEOS was closed to new entrants and the Provider was unable to take into account income from a scheme which the Complainant was not already in.

The Provider states that when assessing the overall repayment capacity, it takes a 3 year average figure for drawings, in order to reduce the effect of any one exceptional item. The Provider submits that attempts were made to contact the Complainant's accountant for up-to-date financial information on at least 2 occasions. However, the Provider contends that it did not retain details of exact dates and times for these calls.

The Provider submits that the Complainant's tracker bonds were deemed to be inadequate to secure a loan over 5 years because the maturity date of the bonds was circa 2 years from the date that the bonds were proposed as a security, and the clearance date for the loan had to reflect that. The Provider submits that it was correct in informing the Complainant in March 2015 that it was not possible to cash in the tracker bonds and it has apologised for any subsequent incorrect information which he received.

The Provider submits that the Complainant's application for credit was approved on **19 February 2015** and the facility was drawn down on **20 April 2015**. The Provider contends that the delay was due to the time taken to have the security perfected.

The Provider concedes that it requested the Complainant to complete an incorrect assignment document. The Provider also states that around this time, it was made aware that the bonds that had been issued, were the subject of a declaration of trust which meant that they could not be assigned to the Provider as security, without the trust being dissolved. The Provider explains that a special charge document was required for it to hold bonds as security and that the charge document could not be prepared until the trust was dissolved. The Provider says that this contributed to the delay in the drawdown process.

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The Provider has acknowledged making errors on a couple of occasions, namely on 25 February 2015 when it provided incorrect documents to the Complainant and also previously many years ago, in November 2007, when it made an error lodging a sum of money to the Complainant's account although this latter error is not the subject of this complaint.

The Complaint for Adjudication

The complaint is that the Provider was guilty of maladministration when progressing the Complainant's loan application, insofar as it:

1. Failed to consider some of the Complainant's income sources or the nature of his drawings, when assessing his loan application in January 2015.

2. Did not allow the Complainant to use his tracker bonds as a security for a 5 year loan but was willing to accept them as security for a three-year term.

3. Negligently and wrongly prevented him from cashing in his tracker bonds in March 2015.

4. Delayed in facilitating the drawdown of the Complainant's loan until April 2015 notwithstanding that it had been approved in February 2015.

5. Proffered below par customer service and complaints handling and refused to change the Complainant's relationship manager.

The Complainant states that he wants an admission of culpability on the part of the Provider and compensation for its inefficiency and refusal to deal with this situation.

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.

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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 **13 May 2021**, 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. Following the consideration of additional submissions from the parties, the final determination of this office is set out below.

As set out above, there are 5 identified aspects to this complaint.

1. The Provider failed to consider some of the Complainant's income sources or the nature of his drawings when assessing his loan application in January 2015.

The Complainant asserts that when assessing his loan application, the Provider failed to take note of or to consider his income sources from the FRS and the AEOS scheme. In addition, the Complainant states that the Provider failed to take note of or take into account the nature of his drawings.

The Provider says that it did take these factors into account, and that on **5 September 2014** it's Agri-Advisor completed a visit to the Complainant's farm and assessed the Complainant's financial affairs following the Complainant's request for finance. The Provider also asserts that the FRS income in the region of €20,000 per annum was included in the assessment of the Complainant's repayment capacity. The Provider explains that the FRS income figure of €23,777 was included in its assessment but the figure was a gross income figure and as per the Complainant's 2013 accounts, the net profit figure for the FRS activity showed a surplus income of €1,851.

A copy of the report generated on foot of this agri-visit has been supplied. From a review of the document it is clear, in my opinion, that the Provider examined and assessed the Complainant's financial position appropriately and comprehensively. This was necessary to establish whether the Complainant had sufficient repayment capacity to repay the loan being sought. It is identifiable from the farm visit report that the AEOS scheme was considered in the report as was income related to the Complainant's other business.

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The Provider in its response to this Office, explains in detail that it considered all income and expenditure that the Complainant mentioned, when assessing his loan application. Amongst other things it explains that the Provider's Agri-Advisor reviewed the Complainant's financial accounts for the year ending 31 December 2012 and the year ending 31 December 2013 to establish whether the Complainant had sufficient repayment capacity to repay the loan being sought.

The Complainant is unhappy with the provider's position in that respect and in his submission since the preliminary decision of this Office was issued, he says that:

> "I have attached the income and expenditure projections that was compiled by the bank at the time of my loan application. Nowhere on these projections is any off farm income for myself included. I have also attached an event note from a meeting which I had where Mr [name redacted] stated that no income was included from the fencing business. I feel that this clearly stating that the provider's approach to assessing my income sources is very inadequate, inconsistent between the different parties involved and unconsidered. There are conflicting reports and I believe the add ons to the event notes were done retrospectively following my complaint as they were not in original event notes that I had requested previously. The bank stated that they tried to contact my accountant on several occasions, which my accountant absolutely denies, had my accountant been contacted, the bank would have gotten a clear picture of my drawings for the last few years."

In fact, I note that the excerpt from the "event note" referred to by the Complainant in the submission above is one which is already contained in the provider's evidence and **27 October 2017**, more than 2 years after the Complainant's stocking loan application of January 2015, which is the subject of this complaint, and which was approved in February 2015 and drawn down in April 2015.

I note that the following table was produced in the Agri-Report dated 19 September **2014**:

Year ending 31 December	2013 figures €0k	2012 figures €0k
Net profit (farm)	8.6	0.8
Plus depreciation	4.4	4.3
Plus Provider interest/charges	5.8	8.3
Plus off farm income [Complainant's wife]	22.8	23
Net profit (Complainant's other business)	1.8	8
Plus depreciation	0.8	1.5
TOTAL	**44.2**	**45.9**
Less drawings	-58.5	-50.6
Cash available	**-14.3**	**-4.7**
Less repayments	-42.5	-42.5
Surplus available	**-56.8**	**-47.2**

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I note that the details in that report prepared in the months before the Complainant's January 2015 application for a stocking loan, clearly reference figures for the Complainant's other business. The Provider explains, and the Agri-Report also deals with, the fact that the net profit figures are inclusive of the Rural Environmental Protection Scheme (REPS) payment of €8,000 per annum, which was no longer available from 2015 onwards.

The Provider's analysis showed an average deficit of €52,000 per annum on the 2 years analysed. The Agri-Report also noted that the Complainant had a large level of borrowing in excess of €300,000 and that "*there is no repayment schedule in place for this loan (it may never be paid back, may form part of inheritance)".*

The report went on to state that

> "*security and repayment capacity are the two main concerns I have in relation to this case, security can be increased by taking additional lands and I believe the bank should insist on an additional 20 acres of land to be provided as security. Repayment capacity is not evident based on client's accounts, the level of profitability been shown is extremely poor for the dry stock enterprise. Client is not even retaining his direct payments as trading profit from the farm which is worrying. During the period analysed client had a REPS payment of €8k/yr which will not be there from 2015 onwards, has a significant impact on client's ability to generate surplus cash for bank repayments (accounted for in ongoing budgets)*".

I am satisfied that the documentation provided to me exhibits that the Provider examined and assessed the Complainant's relevant income sources at the relevant time and I don't accept that the Provider's approach at that time, was inadequate or unconsidered.

2. The Provider did not allow the Complainant to use his tracker bonds as a security for a 5-year loan but was willing to accept them as security for a three-year term.

The Complainant complains that the Provider made a determination that it would not accept the tracker bonds in the sum of €60,000 as security for the loan, stating that they were inadequate. The Complainant states that this was one of the reasons why he was denied his application for a loan with a term of 5 years. He submits that ultimately, the Provider decided that the bonds were in fact adequate as security, but the Complainant was forced to take out the loan over a period of 2 years, instead of the original 5 year period.

The Provider asserts that the loan application was never formally declined by the Provider but the Provider did explain to the Complainant that it was not satisfied that he could demonstrate sufficient repayment capacity to repay the loan facility.

The Provider says that the Complainant did not offer the investment policies as security and therefore the Provider did not take this security into account when assessing the initial lending application for €60,000. To that end, having reviewed the farm visit report, there is

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an update that was inserted on **18 February 2015**, according to the Provider (rather than in 2014 as the report suggests) and that states:

> *"branch recently met with client and advised him of the outcome of his application for new funds, after said meeting client mentioned the savings bonds of greater than €60k which he has in his* [redacted] *names and enquired about the possibility of accessing same.*
>
> *After the farm visit, I was aware the savings were in the background when client presented his original proposal, however, the fact these savings were in bonds I did not deem them to be readily accessible. If a charge/lien can be taken over these bonds I would be favourably disposed to lending to client on the strength of the savings provided there is an agreement to clear the proposed borrowing from encashment of bonds at maturity and the proposed borrowing is 100% capital secured".*

Based on the foregoing quote, I do not accept that the Provider is correct to state that it did not take the security into account when clearly, the Agri-Report update states that the Provider was aware that the savings are in the background and did consider the bonds, but after consideration, did not deem them to be readily accessible.

The Provider explains that once the Complainant's application had the support of the Provider's Agri-Advisor, the Provider's branch reviewed the lending application in conjunction with "*the additional proposed security*". Again, the Provider's assertion that the bonds came after the initial loan application, is not supported by the Agri-Advisor's report. It appears from that report that the adviser was cognisant of the bonds and their value "*in the background when client presented his original proposal"* but he didn't deem them to be readily accessible. It also appears that on reflection, in February 2015 there was a change of heart.

Insofar as the decision to offer the loan over a two-year period as opposed to a 5 year period is concerned, the Provider explains that this was due to the fact that the bonds expired in January 2017 and if the Provider had approved the facility over the 5 years sought, the Complainant would not have had an ability to meet monthly capital and interest repayments, whereas the two-year loan was designed to coincide with the expiry of the bonds in January 2017.

The Provider states that it was cognisant of its obligations under provisions 1, 2 and 3 of the ***Code of Conduct for Business Lending to Small and Medium Enterprises 2012***, if it had allowed a 5 year term in circumstances where it had assessed that the Complainant would not have had an ability to meet capital and interest repayments over a 5 year term. Having considered this assertion, in all of the circumstances, I am satisfied that this was a reasonable and proper approach by the Provider. In addition I am conscious that a lending institution has a broad commercial decision as to whether or in what manner, or over what term to provide loan facilities to an applicant seeking funding.

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3. The Provider negligently and wrongly prevented the Complainant from cashing in his tracker bonds in March 2015.

The Provider's position is that the terms and conditions attached to these bonds prohibited them being cashed in at this time. The policy schedule and the terms and conditions applicable to each of the 3 products have been supplied. Amongst other things, it is clear from the policy schedule of each product, that the commencement date was **April 2012** and the initial investment period ended on **4 January 2017**. It also stated "*no encashments switches may be made during the initial investment*". I also note the special condition attached to each policy schedule which states "*this policy is issued subject to a declaration of trust*". In addition, on page 2 of the terms and conditions state "*Warning: if you invest in this product you will not have any access to your money for 4 years and 9 months".*

Page 3 of the policy brochure states

> "*no early encashment. Withdrawals are not permitted during the four-year and nine-month initial investment. You should only invest money in the* [Provider] *Euro Return Fund Issue 24 to which you will not need access during the next 4 years and 9 months."*

In the Complainant's submission since the preliminary decision of this Office was issued, the Complainant has said that:

> If the bank had taken these into account when offered it would have saved considerable time. …
> We also met with [name redacted] in [specified] branch who advised that it was possible to cash in the investments even though a penalty would apply. This option would have been my preferred option at the time as I was in financial difficulty following my loan refusal with work nearing completion on my farm prior to beginning dairy farming.
> …
> I believe that the exert from the policy given to you by [the Provider] is correct where it says about not being able to cash in the investments, but I also believe as I was told by both [a Provider] staff member and by [the investment provider] that there are circumstances where they can be cashed in. I believe that the provider had a legal obligation to inform me of this and the penalties involved.

I take the view that if the Complainant had wished to encash his bonds, notwithstanding the penalties which it seems in such circumstances would have applied, this is a matter he ought to have pursued directly with the investment provider, with which he held the investment contracts. I do not accept that the Provider in this matter, his bank, was obliged to either encourage him or indeed to require him to trigger the application of such penalties to the monies he had invested in the bonds. In light of the wording of the terms and conditions which attached to those investments, I cannot accept that the Provider was negligent or wrongful in its approach, as it is clear that it was either not possible to access the money or to benefit from an early encashment, during the term of the Bonds, or that it was possible to do so, but that this would have exposed the Complainant to financial penalty.

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4. The Provider delayed in facilitating the drawdown of the Complainant's loan until April 2015 notwithstanding the fact it had been approved in February 2015.

As set out above, there is a special condition attached to each bond policy schedule which states "*this policy is issued subject to a declaration of trust*". The Provider was advised that the investments could not be assigned as security for the loan until the said trust was dissolved.

I note that this required the Complainant's solicitor to draft a deed of surrender which the Complainant was required to sign. The Provider states that it received the deeds of surrender from the Complainant's solicitor on **10 March 2015** but unfortunately, there was an error in those documents. The error was explained to the Complainant's solicitor by email dated **23 March 2015** insofar as the section referring to surrendering of the policy "*for cash*" needed to be removed, because the policy would not be encashed prior to maturity. The Complainant's solicitors were advised that the following wording should be included instead

> "*the trust is to be surrendered, the policy to remain in force and assigned to* [the Provider]".

The amended deed of surrender was received the following day, on **24 March 2015** and the assignment documents were signed by the Complainant and the loan was drawn down on **20 April 2015**.

In addition, I note that on 25 February 2015 the Provider supplied the Complainant with incorrect security assignment documents which were completed by the Complainant. The Provider acknowledges this and has apologised for it. However, it does not appear that this had any material effect on the timeline up to drawdown, because of the other documentation that was required to be completed, in order to dissolve the trusts and permit the assignments. Having considered what was involved in the relatively short period of time it took, I do not accept that the Provider was responsible for any significant delay in facilitating the drawdown of the loan.

5. The Provider proffered below par customer service and complaints handling and refused to change the Complainants relationship manager.

At the outset, the Provider has accepted that at one point, it gave the Complainant incorrect information regarding the ability to encash the tracker bonds. This is evident in one of the audio recordings of telephone calls between the Complainant and the Provider. In that regard, this was a clear below par performance by the Provider with respect to customer service, when the Complainant was seeking clear information.

With regards to the request to remove the relationship manager, the audio phone calls also demonstrate that the Provider had explained at one point that it was unable to remove the relationship manager while the account remained in that branch. The Provider did explain in its submissions to this Office that it resolved this issue by removing the relationship

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manager's name from the Complainant's profile and this was completed on **27 August 2018**. The Provider acknowledged the delay and apologised. It was explained during one of the phone calls that this was related to an IT issue but other than that, there was no real explanation as to why this could not have been acted upon earlier. Arising out of the foregoing, I'm satisfied that the Provider did not deal with the complaint regarding the changing of the relationship manager in a timely manner and I accept that the Provider could have communicated better with the Complainant in this regard.

In reviewing the evidence made available to this Office for the investigation of this complaint, I am conscious that in early 2015, the Provider worked with the Complainant to find a solution to the Complainant's requirement for a stocking loan. Whilst I accept that the Complainant was frustrated with the time it took to resolve the issues in question, I am satisfied that the Provider was under no obligation to make funds available to the Complainant, but it worked with him to ensure that he ultimately secured the funding he had sought, although it was repayable over a shorter period of time.

I also note that in the unusual circumstances where the Complainant was unwilling to work with his former Relationship Manager at the branch, the Provider took steps to change this relationship and although the period in question to achieve this was very considerably longer than it ought to have been, I am conscious that the Provider recognised the issue and worked to ensure that a solution could be found.

I note that when the Provider responded to the formal investigation of this complaint in October 2020, it acknowledged that the changes it had implemented had taken longer to process than the Complainant would have wished for and it offered apologies to the Complainant in that regard. The Provider also, in recognition of these errors and customer service failings and indeed the length of time the matter had been outstanding for the Complainant, indicated its desire to offer a goodwill gesture of €3,000 to the Complainant in full and final settlement of his complaints.

Although the Complainant has indicated that he believes he is entitled to a figure vastly greater than €3,000, in my opinion, this compensatory payment offered is suitable and adequate to redress the customer service failures which have been referred to within this investigation.

Accordingly, because this compensatory offer was made at an early stage of the investigation by this Office, and it remains open to the Complainant for acceptance, and because I consider that offer to be a reasonable one to redress the Provider's errors, I do not consider it necessary to uphold this complaint and it will be a matter now for the Complainant to communicate directly with the Provider if he wishes to accept the compensatory payment which is available to him.

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Conclusion

My Decision pursuant to ***Section 60(1)*** of the ***Financial Services and Pensions Ombudsman Act 2017*** is that this complaint is rejected.

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

MARYROSE MCGOVERN
Deputy Financial Services and Pensions Ombudsman

30 August 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.