



<u>Decision Ref:</u>	2021-0340
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Personal Loan
<u>Conduct(s) complained of:</u>	Dissatisfaction with customer service Delayed or inadequate communication
<u>Outcome:</u>	Rejected

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

This complaint arises out of the Provider's refusal of a loan application submitted by the Complainant.

The Complainant's Case

The Complainant explains that he has been a customer of the Provider for in excess of 50 years. The Complainant wishes to build a new house on the site of his current home. He is seeking a personal loan from the Provider to build this new house using either his home or the new house as security. He intends to sell his current family home on completion of building his new house and he intends to repay the Provider capital and interest together once the current family home has sold.

The Complainant states that the Provider has refused his request for a loan. He states that he did not receive an answer to his proposal for approximately 2 months. The Complainant feels that he has been treated very badly, particularly after his long relationship with the Provider in excess of 50 years. The Complainant states that he has received nothing in writing from the Provider and that all business since his visit to the local branch in March 2019 has been conducted over the phone and that he has nothing in writing to show where or how he did not meet the Providers requirements.

The Complainant wants determination as to whether he has been treated fairly and to ascertain whether there are other options available to him. The Complainant also wants sight of the various proposals that were offered within the Provider on his behalf and the reasons why they were turned down.

The Provider's Case

The Provider states that the Complainant's credit proposal did not proceed to formal application given that it was declined at the enquiry stage of the Provider's process. The Provider states that the Complainant's credit proposal was assessed based on phone calls between the Complainant and the Provider. The Provider states that it is not able to substantively account for the time period between 20 March 2019 and 11 May 2019 because the member of staff who was dealing with the application has been on long-term leave. In this regard, the Provider in its response to this office has acknowledged this as a shortcoming and has made an offer of €500 to the Complainant for any perceived customer service failings on the part of the Provider during this period.

With respect to the refusal of the loan application, the Provider's position is that it was assessed at the enquiry stage and that the proposed credit facility was not feasible as it was likely to be classed as a development finance/bridging facility and that repayment capacity did not exist for the mortgage over the term specified.

The Complaint for Adjudication

The complaint is that the Provider acted unfairly and unreasonable in refusing the Complainant's loan application and proffered poor communication and 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.

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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 11 August 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.

Following the issue of my Preliminary Decision, the Complainant made a submission under cover of his e-mail and letter to this Office dated 30 August 2021, a copy of which was transmitted to the Provider for its consideration.

The Provider advised this Office under cover of its e-mail dated 6 September 2021 that it had no further submission to make.

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

In a letter to this office of July 2019, the Complainant stated his age and pointed out that he was retired and living at his home address since the 70s. He explains that his house is a large house, and he has obtained full planning permission for a smaller detached house in the side garden. It is his intention to downsize into the new build and sell his family home.

The Complainant states that on 19 March 2019, he called into the Provider's branch to seek what he describes as "a personal loan/overdraft/old-style bridging loan" to build the new house. He explains it was his intention to sell his existing house and then repay the Provider in full in capital and interest in the shortest time possible.

He said when he met the Provider's branch manager on 19 March 2019, he explained his circumstances and his intentions. He states that he was told that he needed a mortgage but he was adamant that he did not want a mortgage and that he just needed a short-term finance facility to build and sell. The Complainant states that the branch manager kept going back to the mortgage product and raised a number of questions. He also sets out that she had explained to him "we don't do bridging; suppose you can't sell your house; or you have problems with the title etc".

The Complainant says that this person rang a colleague within the Provider who advised her to phone the Complex Mortgage Section in the Provider's head office.

The Complainant states that a month passed with no contact from the Provider. He states he telephoned the Provider on 11 April 2019 and was told that somebody would telephone back but they did not.

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The Complainant states that by 10 May 2019 he had still received no reply or response from his branch and he therefore phoned the Provider's head office loan department and asked for the Complex Mortgage Section but he was told that they cannot take or make calls or meet with customers.

The Complainant states that he wrote to the CEO of the Provider on 11 May 2019. A copy of that letter has been provided and in evidence, it sets out the above narrative and asks that the CEO might be able to pass his request on to somebody in the Provider who would be able to assist him.

The Complainant states that on 15 May 2019, he received a phone call from the manager of the local branch who stated that she had tried to contact the Complainant by telephone and email over the previous months. The Complainant disputes this and states that he had never been contacted.

During this call, the Complainant was informed that the Complex Mortgage Section had refused his application. The Complainant states that he was brought through the reasons which he feels were incorrect and did not relate to his financing request. For example, the Complainant explains that he was not seeking "development bridging", there was no problem with using the new build as security instead of his family home and he did have the necessary funds to cover an interest only loan. The Complainant asserts that at this point in the call, the Provider's member of staff let out an audible sigh.

The Complainant then received the emails between the Provider's branch and the Complex Mortgage Section in relation to the Complainant's application.

On or about 21 May 2019, the Complainant states that he received a letter from the Provider explaining that they were investigating his complaint. The Complainant explains that nowhere in his letter to the CEO did he complain. On 27 May 2019, the Complainant received a call from a member of staff of the Provider phoning about his complaint. The Complainant states that he explained that he had not complained notwithstanding the fact that he felt he had grounds to complain. The Complainant states that it was explained to him that there were new lending criteria but that she would look at an interest only option for him for up to 9 months and put together a number of other options and revert back to him.

On 31 May 2019, the Complainant was informed that the Provider would not facilitate the bridging loan. He states that the Provider informed him that the Provider could only do interest only if the Complainant could pay interest and capital. He said he was informed, amongst other things, that a personal loan of €400,000 or €200,000 would only be given to him if there was an agreed sale of his house first.

On 13 June 2019, the Complainant states he received a letter from the Provider dated 6 June 2019, informing him that his request could not be supported by the Provider and that was its final response.

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In relation to the Provider's position, as outlined above, the individual from the Provider's branch who dealt with the Complainant between March and May 2019 is no longer available to the Provider to get that person's recollection of events during that time. However, a statement of recollection from the individual who dealt with the Complainant from 27 May 2019 onwards has been provided. This statement sets out, among other things, that on 27 May 2019, the first interaction, the Complainant explained that his credit proposal was for the Provider to advance a loan of €400,000 to be secured against his private dwelling house. It had an estimated market value of €800,000. He explains that the purpose of the loan was to build a new, smaller property on the same site and with the ultimate aim of building a new property, selling the private dwelling house and paying off the loan. He explains that he wanted a loan facility to accommodate his request. The statement recounts that it was explained to the Complainant that he required a traditional bridging facility in circumstances where he wanted the funds to be advanced and accrue interest until such time as the security property was sold and he had the means to clear the facility.

The statement sets out that it was noted that the proposed security property was not on the market and had no unconditional contracts for sale and that it was explained to the Complainant that while the Provider used to offer bridging facilities that would have met his requirements, it was no longer in a position to do so. It was put to the Complainant that as an alternative, it might be possible to structure the request as a mortgage application and the Complainant indicated that he wanted to explore such alternative avenues and to have his proposal escalated.

The statement provides that following this initial call, all the material was reviewed and while attempts were made to find a solution that would suit the Complainant's needs outside of the mortgage lending context, this proved impossible.

The statement goes on to explain that the possibility of taking the Complainant's private dwelling house as security and releasing the equity in that using the Complainant's current income stream was explored. The Provider explains in this statement that the standard private dwelling house lending policy is to lend to the age of 70 if there is sufficient income to service the debt and therefore, in the Complainant's case, a policy exception was needed to sanction a maximum term of 10 years. The Provider's statement says that the Complainant's affordability was assessed by this individual on several scenarios but that they were either unsuitable or too speculative. It was explained to the Complainant, according to this statement, that the Provider would have to establish sufficient creditworthiness for the proposal, based on household income and expenditure. It was further stated that given the severity of the policy exception that would be required to sanction the loan and the fact that what was being sought to be achieved was, in effect, circumvention of the Provider's policies and procedures, it was outside the remit of this individual to make the final call and it would have to go to senior management for final decision on the matter.

The Provider explains that the Complainant's situation had been sent for consideration to the most senior management team in the Provider's mortgage department but, unfortunately, the Provider was not in the position to support the proposal.

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The Provider's statement states that while the Complainant's financial and professional standing was never in question, the reasons for declining credit were within the regulatory and policy constraints of the Provider. It is also stated that given that the proposal failed on so many policy fronts, there was no alternative but to refer to the senior mortgage management team but there was no viable means to support the proposal in any form based on the facts presented. The Provider states that each scenario presented represented significant lending policy fails.

The email to complex mortgage support dated 19 March 2019 has been furnished in evidence. Among other things, it sets out the Complainant's circumstances and his request to borrow against his private dwelling house. It also states that the Complainant was looking for a facility over 24 months as he is going to sell his private dwelling house and that the build of the new house will take between 9 to 12 months.

The response from complex mortgage support of 19 March 2019 states, amongst other things, that this "*wouldn't be a runner*" and that the Provider's credit department would likely class it as a development finance/bridging facility. The email also expresses concerns over using the existing property as security to build another property and that repayment capacity does not exist for the mortgage over the term specified and while there is 9 months interest only available, repayment capacity should still be evident for capital and interest repayments over the term selected.

There are regulatory measures which apply to the provision of new residential mortgage credit, including bridging finance for such a purpose, to consumers. These include the European Union (Consumer Mortgage Credit Agreements) Regulations 2016 and the Central Bank Consumer Protection Code (2012).

However, within that regulatory framework, it remains a matter for each lender to set its own credit policies and to make its own lending decisions on applications for mortgage or other credit. This office does not have a role in such commercial decisions made by lenders.

I accept on the evidence before me that the Provider refused the above loan application based on its own policies and on a basis of its affordability criteria and that it has not acted unreasonably in doing so. A lending institution has a broad discretion over a commercial decision such as whether to accede to an application of this nature.

It is not the function of this office to act as a final appeal for applications for finance that have been refused. In the absence of evidence of wrongdoing by the Provider or conduct within the terms of Section 60(2) of the Financial Services and Pensions Ombudsman Act 2017, that could ground a finding in favour of the Complainant, I do not uphold this aspect of the complaint.

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In respect of the period between March 2019 and May 2019, the Complainant complains of a lack of engagement and response from the Provider. For the reasons outlined above, the Provider is not in a position to have canvassed the memory of the individual who was dealing with the Complainant at that time and therefore is not in a position to dispute the Complainant's narrative or to explain the delay between March 2019 and May 2019. As is also outlined above, the Provider has acknowledged this as a shortcoming in its response to this office and has made an offer of €500 to the Complainant for any perceived customer service failings on the part of the Provider during this period.

I believe this to be a reasonable sum of compensation for the Complainant.

For this reason, I do not uphold this complaint.

Conclusion

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

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



**GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

28 September 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,

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**(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.

