An tOmbudsman Seirbhísí Airgeadais agus Pinsean
Financial Services and Pensions Ombudsman

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| **Decision Ref:** | 2021-0390 |
| **Sector:** | Banking |
| **Product / Service:** | Loans |
| **Conduct(s) complained of:** | Failure to process instructions in a timely manner<br>Fees & charges applied |
| **Outcome:** | Rejected |

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

The complaint is in relation to the charge of a €1,000.00 (one thousand Euro) plus VAT valuation fee for the purchase of an investment property.

### The Complainants' Case

The Complainants submit that the First Complainant contacted the Provider in relation to purchasing a new investment property in **September 2018**. The Complainants state that they were existing customers with a number of investment properties, financed by the Provider. The Complainants contend they submitted their Term Loan application and it was agreed that two properties were required as security, and a Heads of Terms Statement regarding loan approval was issued on **25 September 2018**. A Letter of Offer was issued dated **4 October 2018** and was signed by all parties to the loan on **9 October 2018**.

The Complainants are unhappy that they have been charged €1,000.00 (one thousand Euro) plus VAT for a new full valuation of one of the properties required as security for the Term Loan. The Complainants make the argument that a valuation had been completed on the property by Valuer A just over two years earlier and they maintain that an updated version of this valuation should have been accepted by the Provider.

The Complainants contend that, on **11 October 2018**, a representative of the Provider agreed to locate the previous valuation and query whether this was still acceptable to the Provider.

The Complainants submit that on **1 November 2018** the Provider confirmed by telephone that the previous valuation was unacceptable for two reasons:

1) *It was a summary valuation and not a full valuation as required;*
2) *Valuer A is no longer on the Provider's panel of approved valuers and therefore a new full valuation was required from an approved valuer.*

The Complainants raised their concerns by email on **12 November 2018.** In this email the First Complainant outlined his frustration regarding the requirement for a new valuation, given the low loan-to-value- ratio, and remarked on the delayed communication from the Provider about the matter. The Complainants contend that, as the original Business Manager was unavailable a new representative responded to the Complainants' concerns on **13 November 2018** and made the following statement regarding the valuation requirements:

> "*Under agreed Central Bank Protocol, we are obliged to obtain a formal valuation in prescribed format (irrespective of the anticipated loan to value)"*

The First Complainant contends that this statement is incorrect and states that he requested that the Provider furnish him with evidence of this protocol. He contends that he only agreed for the valuation to be completed by Property Valuer B in order to progress the sale. He submits he also made it clear, that if the Provider did not furnish him with the Central Bank requirements/protocol regarding the absolute requirement for a new valuation, he would require the Provider to cover the cost of the valuation.

The First Complainant submits in his email of **14 November 2018** that he contacted the Customer Contact Unit in the Central Bank directly, and he explained his "*exact situation*". He states that, after some research, he was advised by a Central Bank agent that there was no Central Bank protocol regarding this issue. The First Complainant submits that the valuation requirement is not a Central Bank protocol but the Provider's requirement.

The Complainants raised a complaint with the Provider on **19 February 2019**. The Provider issued its Final Response on **26 February 2019** followed by a meeting on **5 March 2019.** The Complainants state that they wrote to the Provider again on **7 March 2019**, however, due to an incorrect email address this was not received until **20 August 2019**. The First Complainant contends he spoke with the Provider by telephone **23 September 2019** and was assured he would hear back in a number of days. The Complainants submit that they followed up with another email on **4 November 2019** and that the Provider responded on **5 November 2019** to advise that its position remained the same, as set out in its Final Response Letter.

The First Complainant submits that he is aggrieved by the fact that the Provider does not have any audio recordings of the phone calls between the First Complainant and the Provider. The Complainants state that the Provider should have recordings of phone calls on landlines at least, as he believes not all phone calls were between mobile phones.

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In response the Provider has stated that no such recordings exist and that it is not obliged to keep recordings of such phone calls and it does not do so, as a general practice.

The Complainants submit that as a result of time spent in having to deal with this complaint:

> "*the matter has cost us a hell of a lot more than the €1k plus Vat in our time, upset and annoyance …. Therefore at this stage we not only request out €1,000 plus Vat return but that we also be awarded reasonable compensation for our time and upset in having to deal with this issue*"

In further correspondence to this Office the Complainants submit that they want the Provider to refund the €1,000.00 (one thousand euro) plus VAT and to compensate them for the inconvenience of having to pursue this complaint.

**The Provider's Case**

The Provider states that in response to the Complainants questioning the Agreed Central Bank Protocol it responded to the Complainants on **16 November 2018** stating:

> "*The Central Bank of Ireland issues to ourselves [the Provider] & the various other lending institutions as to when & how we need to conduct security valuations on property mortgaged to [the Provider]. On foot of these CBI guidelines, the [Provider] formulates & implements our own Group Property Valuation policy*".

The Provider asserts that under its policy if a Term Loan is agreed with attached security being greater then €500,000.00 (five hundred thousand Euro) a new external valuation is required, and that all valuations must be completed by an agreed panel of valuers, unless a valuation has been completed in the previous six months.

The Provider submits that under Clause 9 of the Appendix to the Offer Letter, which was signed by the Complainants, it is a term of the agreement that:

> "*1.1 The Borrower shall pay the Bank on demand, on the basis of a full indemnity, all Costs (such as Costs to be charged in accordance with applicable law at the Bank's rate prevailing from time to time) incurred by the Bank in connection with:*
> *…*
> *(b) the inspection, valuation (including, without limitation, any valuation,), maintenance and monitoring of any security and/or title to any property forming part of the security of this Offer Letter;*
> *….*
> *The Borrower hereby authorise the Bank to debit any accounts with the Bank or with any other Bank or financial institution in the name of the Borrower with any and all of the foregoing Costs and amounts, as they arise from time to time.*
>
> *Any survey or valuation fees will be the responsibility of the borrower*"

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The Provider submits that the Provider's Relationship Manager's statement, records that the First Complainant was made aware of the requirement of a valuation, from the point of the initial meeting on **10 September 2018**. The Provider states that following this, the formal requirement for that valuation was clearly set out, first in the Heads of Terms letter of **20 September 2018**, and again in the Offer Letter, which was signed and accepted by the Complainants on **9 October 2018**.

The Provider states that the First Complainant sought to use an existing valuation of the property, in order to reduce costs. The Provider states that during a telephone call on the **1 November 2018** it did agree to consider using the previous valuation and "*explore the possibility of obtaining an update"* report from the same valuer who did the initial report two years previously, and who had indicated to the Complaints that no extra charge would be incurred for an update report.

The Provider submits that it had consistently advised the Complainants that if the existing report was not of the standard required to meet the current valuation requirements then a new valuation report would be required. Furthermore, the Provider asserts that it informed the Complainants that the report would have to be carried out by a valuer approved by the Provider. The Provider submits that it informed the Complainants of the expected costs of approximately €1,000.00 (one thousand Euro) plus VAT.

The Provider submits that after it had confirmed with the Complainants that the existing valuation was not of the required standard, it understood that the Complainants had agreed to proceed with the valuation at the stated cost to them.

The Provider submits that the signed Offer Letter accepted on **9 October 2018** provides the necessary authority to debit the Complainants' account for the payment of the valuation fee incurred.

The Provider submits that it does not accept that there was an agreement that if the valuation requirement was not necessary under Central Bank protocol, then the Provider would cover the costs of the valuation.

The Provider asserts that its reference to the Complainants, regarding the new valuation report needed, of an "*Agreed Central Bank Protocol*" was correct, but it says that perhaps the Complainants misunderstood what that term meant. The Provider submits that:

> "*The Provider is obliged by the Central Bank to maintain internal protocols, of which the Provider's policy with regard to valuations is one component. The Central Bank monitors the Provider's compliance with its internal protocol. The statement from the Provider … is correct, inasmuch as the Provider is obliged by the Central Bank to have a protocol, that protocol has been submitted to the Central Bank, and compliance with that protocol is monitored by the Central Bank.*
> *…*
> *The use of the word "agreed" implies that this protocol was not imposed on the Provider by the Central Bank, but rather was the Provider's protocol, with which the Central Bank agreed."*

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The Provider submits that the above was clarified to the Complainants on **16 November 2018** in an email to the First Complainant which states:

> "*The Central Bank of Ireland issues guidelines to ourselves & the various lending institutions as to when & how we need to conduct security valuations on property mortgaged to the Bank.*
> *On foot of the CBI guidelines, the Bank formulates & implements our own Group Property valuation policy.*
> *Where we agree to provide new/increased lending based on existing property security value <€500k, our policy dates that we require a current external valuation (unless a prior valuation had been completed in the previous 6 months). We have a specific panel of valuers from whom we accept such valuations."*

The Provider states that it does not accept that there was any delay in the valuation process or that the valuation process itself caused any delay to the property purchase process.

The Provider contends that the Complainants were at all times made aware of the requirement for a valuation prior to the original Offer Letter being issued. The Provider states that information regarding legal and other fees is clearly included in the Offer Letter and in signing this document, the Complainants authorised the debit of €1,000.00 (one thousand Euro) plus VAT for the purpose of a new valuation.

The Provider acknowledges that it agreed to consider the valuation report previously received, but at all times it maintained that if that valuation report did not comply with its current protocol, a new one would be required.

## The Complaint for Adjudication

The complaint is that the Provider incorrectly charged the Complainants €1,000.00 (one thousand Euro) plus VAT for the completion of a new property valuation and debited this charge from their account, against their instructions.

## 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.

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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 **7 October 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. In the absence of additional submissions from the parties, within the period permitted, the final determination of this office is set out below.

The relationship between the parties arises from a contract signed for the purpose of a loan for an investment property which the Complainants sought to purchase. The Complainants say that the Provider was not authorised to debit €1,000.00 (one thousand Euro) plus VAT from their account.

I have carefully considered all of the evidence submitted by both parties. I note that the Provider's Heads of Terms documents dated **20 September 2018** states that:

> *"A satisfactory independent valuation (to include open market & vacant possession values) of the property at [*written address*] completed by a member of the Bank's panel prior to drawdown confirming a minimum value of € 700,000."*

I note the email correspondence from **25 September 2018** from the Provider to the First Complainant which includes the following, in its list of steps required to drawdowns the loan:

> *" – The valuation of properties on [addresses] need to be instructed by the Bank and completed by a member of the Bank's valuation panel- if you have a preferred valuer (with no conflict of interest), please advise & I can confirm if they are on the Bank's panel*."

Furthermore, I note the Provider has submitted that the Complainants agreed to the terms of the Offer Letter, which clearly included the valuation fees as outlined under Legal and Other fees:

> "*It is understood that any Legal or other fees, including Valuation fees incurred in perfecting the Security or any other requirements will be payable by the Borrower whether or not any finds [*funds*] are advanced."*

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And under Condition Precedent to Drawdown:

> "*6. A satisfactory independent valuation (to include open market & vacant possession values) of the property at [Address] completed by a member of the Bank's panel prior to drawdown confirming minimum value of €700,000. The Bank has the right to obtain updated valuations of the property in such form and at such time as the Bank may require….*"

I note the Complainants assert that the Provider should have accepted the valuation previously carried out and that only if absolutely needed, an update on that valuation, carried out by the same Property Valuer A (with whom they had agreed that no charges would be incurred) should have been sufficient.

I note the First Complainant refers to this issue in correspondence dated **12 November 2018** from the First Complainant to the Provider where he states:

> "*You will note [*Named Agent*] informed me on 11th October that [*the Provider*] may accept [*previous named valuers*] updated report*."

[emphasis added]

I note the Complainants' correspondence to the Provider on **13 November 2018**, which states:

> "*Please look at last email from [*named Provider's Agent*] over a month ago he said he requested the original valuation from [*Named previous Valuer*] and would see if it was acceptable….*

[emphasis added]

I note the Complainants submitted in correspondence to this Office on the **28 January 2021** that:

> " [Named Provider's Agent*] informing me on the 11th October 2018 that* [the Provider*] may accept the [*Named Valuation Company*] updated report and this was a continuation of what I had been told and understood from the beginning*."

[emphasis added]

Further, the Complainants have added comments to the Provider's document sent to this Office on **28 January 2021** under the section titled "*Timeline as confirmed by Relationship Manager*". The Complainants added the comment:

> "**but indicated he hoped existing valuation on [*property address*] would be sufficient*"

[emphasis added]

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I take the view that the above remarks do not amount to any assurance that there was to be any deviation from the agreed terms under the contract, as signed in the Offer Letter. I note that the Provider indicated that it would look at the valuation report previously carried out and if it complied with the Provider's requirements, it would be accepted. I accept that the Provider searched for this valuation report, considered it, and found that it was not in fact compliant with its requirements at that time because:

1) It was a summary valuation and not a full valuation, as required;
2) The previous Valuer was no longer on the Provider's panel of approved valuers and therefore a new full valuation was required from an approved valuer.
3) The report was not carried out within the previous six month period.

Based on the above I am satisfied that the Provider acted reasonably and carried out its commitment which it had set out to the Complainants, to consider the report to see if it was sufficient. This is evident from the language used by the First named Complainant himself as he refers to the fact that the valuation report "*may*" have been accepted. I cannot accept that the term "*may*" have been accepted, amounts to an obligation to accept.

I note from the evidence submitted that the Complainants are experienced property investors and had a standing relationship with the Provider and that the Provider had the previous valuation report carried out by Property Valuer A, who was however no longer on its list of approved valuation agents.

Furthermore, I note the Complainants' submissions in relation to the fact that according to the Complainants, the value of the Property had "*increased considerably*" from the time it had been previously valued some two years earlier. I note the Complainants make reference to a different loan taken out with the Provider, in which there was a much lower loan to value ratio, than the more recent loan and as a result, they were of the understanding that a new valuation would not be required.

I cannot agree with the Complainants' assertions. The Provider is entitled from time to time to develop or evolve the way it carries out its business. The submissions in relation to another separate loan are not relevant for the purpose of this complaint.

In relation to the issue that the requirement for the valuation report was falsely stated by the Provider to be a requirement from the Central Bank, I note the Complainants' correspondence to the Provider dated **13 November 2018** which states:

> "*As per my last email I do not understand how this valuation can be required in these circumstances please send me a copy of the relevant Central Bank's requirement / protocol you refer to. If I can establish with the Central Bank that there is no such absolut [*absolute*] requirement (relevant to our particular case) by them for the valuation you now require us to pay for we will require [*the Provider*] to cover the cost."*

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The Complainants submit that this statement indicated that they did not give permission for the money for the valuation report to be debited from their account and that, unless the Provider can prove the Central Bank's requirement, then the cost of the valuation is one to be borne by the Provider. Furthermore, the Complainants stated that having directly contacted the Central Bank to query this requirement, it transpired that the Central Bank does not have such a requirement in place.

I note the Complainants' email from the First Complainant to the Provider on **14 November 2018** which states**:**

> **"***If you are still insisting on the new valuation from your valuers, as opposed to updated [*Named Previous Valuer*] valuation, proceed without further delay and we can sort out who is right or wrong later re cost*."

Furthermore, I note the Complainants' submissions to this Office from **28 January 2021** in which the First Complainant states:

> *"We [*the Complainants*] only agreed to proceed with their new valuer under protest when our backs were up against the wall and we were in danger of losing our considerable deposit on the property being purchased, however we only gave them the go ahead with the new valuation strictly on the basis that they could prove their claim about the requirement being a Central Bank Protocol requirement*"

I note the Provider's position to the above issue is outlined in correspondence to the Complainants on the **16 November 2018**, which states:

> "*The Central Bank of Ireland issues guidelines to ourselves & the various lending institutions as to when & how we need to conduct security valuations on property mortgaged to the Bank.*
> *On foot of these CBI guidelines, the* [Provider] *formulates & Implements our own group Property Valuation policy.*
> *Where we agree to provider new/increased lending based on existing property security value >500k, our policy dictates that we require a current external valuation (unless a prior valuation had been completed in the previous 6 months).*
> *We have a specific panel of valuers from whom we accept such valuations.*
> *I understand you* [the Complainants] *were to meet the panel Valuer yesterday & we will pursue him for his report"*.

I note that the Provider contends that if there was any ambiguity regarding the correct interpretation of the sentence "*Under Agreed Central Bank Protocol*" that it was adequately clarified by the above correspondence on **16 November 2018**.

I note that the requirement for a suitable valuation is first and foremost one which arose from the agreement between the parties under the Offer Letter and the Heads of Terms. The subsequent argument raised by the Complainants as to the meaning of an "*Agreed Central Bank Protocol*" is not relevant to that specific contractual obligation.

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I am satisfied that the Provider at no point made any indication that the previous valuation report would be accepted. I accept that, having considered the previous valuation report, the Provider was entitled to determine that it did not satisfy its requirements and that an up to date valuation from a panel member would be required.

Finally, I do not accept that there was any misleading information given by the Provider when it sought to explain that the requirement for the valuation report came from an "*Agreed Central Bank*" protocol.

I am satisfied that the Provider had a contractual entitlement to a new valuation report of the property and that this requirement was clearly communicated and clarified to the Complainants. I note that the Complainants engaged in order to facilitate the valuation and chose the valuation company and met the valuer, but I do not accept that the Provider was in any way bound by the Complainants' suggestion that the Provider would cover the cost if the report was not a specific Central Bank requirement.

For the reasons set out above, this complaint cannot be upheld.

**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**

29 October 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.**