



<u>Decision Ref:</u>	2021-0471
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Loans
<u>Conduct(s) complained of:</u>	Failure to provide product/service information Dissatisfaction with customer service Failure to process instructions in a timely manner Refusals (banking)
<u>Outcome:</u>	Partially upheld

LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The Complainant operates a small business. The Complainant was granted a stocking loan in **September 2016** (the **Stocking Loan**) which was due to be repaid by **September 2017**. In **November 2017**, the Complainant applied for, and was declined, a further stocking loan. This was followed by a number of unsuccessful reviews/appeals. At the same time, the Stocking Loan had fallen due for payment and remained outstanding. The Provider subsequently withdrew the Complainant's banking facilities.

The Complainant's Case

The Complainant explains that she applied for a stocking loan in **November 2017** and the application was declined. This was appealed by the Complainant, however, the Complainant asserts that the appeal was not processed properly by the Provider. The Complainant outlines that *"I was misled on a number of issues, the SME lending regulations have been breached on a number of occasions, I was lied to, my correspondence was ignored by [the Provider] at a senior level for months"*

The Complainant states that *"I was told they would not leave me with stock produced and no funding, but this is what happened, I was also unable to pay the remaining balance on my old stocking loan until this matter was resolved."* The Complainant continues by explaining the Provider *"...refused to deal with me in my branch and told me they were not allowed to 'engage in dialogue' with me, however at the same time I was there with a letter claiming I was not cooperating with them, they have refused to acknowledge my appeal on this decision."*

In terms of the stocking loan, the Complainant advises that she was informed a second stage appeal had taken place but she was not provided with any details of this appeal. The Complainant was later told that the Provider had decided not to proceed with the second stage appeal. The Complainant explains that her emails were ignored for 8 months and she was afforded no customer service. It is also stated that senior officials within the Provider visited her office and promised they would deal with the Complainant's issues, confirming there were serious problems. However, the Provider *"... didn't deal with the issues and called me to say there were being forbidden from dealing with me."* The Complainant submits the Provider's conduct has put her company into bad credit and has refused to deal with her over the phone, in writing or in branch. The Complainant believes she is being subjected to a *witch hunt*.

A data subject access request was also made by the Complainant but the Provider *"... have sent only a small amount of what they are legally required, they have blacked out the information they were not legally entitled to black out, clearly records are being withheld from me as they support my position."*

The Provider's Case

The Provider states that the stocking loan the subject of this complaint was initially applied for on **9 November 2017**. At the time of the Provider's Formal Response, the Complainant also had an outstanding stocking loan drawn down on **21 September 2016** which was due to be repaid by **18 September 2017**.

On **9 November 2017**, the Complainant telephoned its Direct Sales Department to apply for a 12 month stocking loan in the amount of €40,000. The Complainant was contacted by the Direct Sales Department on **13 November 2017** where the loan application was discussed. It was understood the Complainant required the loan to clear the existing stocking loan which stood at €12,525. During this conversation, the Complainant remarked that *'I don't want to part with that money if you could turn around to me and say sorry we're not going to give you a stocking loan and then I can't refund my customers the money if we cancel the order.'*

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The Provider's Direct Lending Advisor applied for a 12 month stocking loan facility in the amount of €52,000 on **16 November 2017**. A letter also issued to the Complainant on **16 November 2017**, acknowledging the credit application and that due to an administrative issue, the Provider would not be in a position to revert to the Complainant within 15 working days and would be in contact by **30 November 2017**. The loan application was assessed on **20 November 2017** and declined by the Underwriting Department due to poor account operation and it was not willing to restructure the previous year's stocking loan. A Direct Lending Advisor spoke to the Complainant about the decision on her loan application. The Provider states that the Complainant became extremely irate and claimed the Provider was *'killing her business'*.

The Complainant was advised that the decision could be appealed on the basis of her previous track record, the fact the funds being requested were vital to keep the business in operation, and that the Complainant had the funds to clear the existing stocking loan. The appeals process was also outlined in the Provider's letter declining the loan on **20 November 2017**.

The Recovery Department also contacted the Complainant on **20 November 2017** as the existing stocking loan was due to be repaid on **18 September 2017**. A letter was sent to the Complainant on this date requesting the outstanding balance be paid in full.

An informal appeal was submitted on **21 November 2017** whereby the loan amount being applied for was €40,000 as the Complainant confirmed during the call on **20 November 2017** that she would clear the existing stocking loan. The Complainant contacted the Provider on the same day to enquire about the outcome of the appeal explaining that she did not have time to wait for a decision as factories would cancel her orders and she would not have sufficient stock in time for December. The Complainant also outlined the importance of the loan to her business. When it was explained to the Complainant that the appeal had been submitted and her Direct Lending Advisor would be in touch once a decision was made, the Complainant requested to speak with a manager as she felt she was not being listened to.

On **22 November 2017**, the Underwriting Department assessed the informal appeal and it was declined due to a poor Irish Credit Bureau (ICB) record and unsatisfactory account performance. Subsequent to this, the Direct Lending Advisor contacted the Complainant to notify her of the decision. The Complainant was advised of the second stage appeal which was a formal appeal that would require the Complainant to complete a form. The Complainant declined the offer to email the form to her stating *'... I am going to do what I did last time I had a problem with [the Provider] I am going to email all the Directors ...'* The Complainant emailed the Provider's CEO on **22 November 2017** requesting a face-to-face meeting.

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The Provider wrote to the Complainant on **24 November 2017** declining the informal appeal and outlined the next stage of the appeals process. The Complainant contacted the Provider on **27 November 2017** to discuss this letter which the Complainant believed to be misleading as to the reasons for declining the appeal. Following a conversation with the Complainant on **28 November 2017**, the second informal appeal was submitted by a Team Leader based on confirmation that arrears on a mortgage loan with another financial services provider had been brought up to date and the Complainant had capacity to clear the existing stocking loan. The second informal appeal was assessed and declined on **30 November 2017**. The Team Leader contacted the Underwriting Department and was advised to obtain written confirmation from the mortgage loan provider that this loan was up to date and confirmation that funds were in place to meet the existing stocking loan.

A regional head contacted the Complainant on **30 November 2017**, and arranged a meeting the following day with himself and a provincial head of business banking at the Complainant's premises. The loan application and the Complainant's business were discussed at the meeting.

The Complainant was advised that in an attempt to get a favourable decision at the formal appeal stage, she would need to provide additional documentation to support her appeal which included, (i) details of outstanding debtors; (ii) inventory of stock at hand; and (iii) a statement showing the mortgage loan was up to date.

An email was received from the Complainant on **5 December 2017** attaching a stock inventory and explained that relevant confirmation had been sought from the mortgage loan provider. An email was sent to a Business Advisor copying the Complainant, requesting that contact be made with the Complainant on Monday with a view to progressing the formal appeal. A letter from the mortgage loan provider was forwarded to the Provider on **13 December 2017**. The Business Advisor contacted the Underwriting Department to discuss the declined loan application. In an effort to attain approval, the Underwriting Department requested the 2016 financial accounts for the business. The Business Advisor telephoned the Complainant on **14 December 2017** to request the accounts but the Complainant was not in a position to talk. The Complainant was also contacted by the Recovery Department regarding the existing stocking loan as it was due to be fully repaid.

The Complainant was provided with a formal appeal form on **18 December 2017**. The Complainant was also advised that the Business Advisor had spoken with her accountant regarding the status of financial accounts. The formal appeal form was completed and return on the same day.

On **18 December 2017**, the Recovery Department also wrote to the Complainant advising that the stocking loan was in arrears for 3 consecutive months, and documentation was requested to allow the Provider to carry out a review to consider an alternative repayment arrangement.

An email was sent by the Business Advisor to the Complainant's accountant on **19 and 29 December 2017** requesting the 2016 financial account. The Business Advisor asked that the Complainant contact her accountant on **10 January 2018**. The Complainant responded stating that she would.

The Complainant emailed the Provider's CEO and the regional head on **15 January 2018**, regarding the delay dealing with her appeal. This was acknowledged by the CEO's office on the same day. In a separate email, the regional head referred to the 2016 financial accounts and enquired as to whether the Complainant had received them, and if so, to send them on. In response, the Complainant explained that she did not have the accounts, and that she was told her appeal was pending a letter from the mortgage loan provider which was submitted months ago. The Provider outlines further communications between the parties, and picking up at a telephone call on **17 January 2018**, the Complainant was given the option of having her appeal assessed by the Credit Appeals Team without the 2016 financial accounts. The Complainant made the point that this was not required at the first appeal but confirmed she wished for the formal appeal to proceed without the accounts. A letter was issued to the Complainant on **18 January 2018** acknowledging her formal appeal.

The Credit Appeals Team assessed the Complainant's appeal on **23 January 2018** and a letter issued confirming the Provider was unable to provide the credit facilities sought. A decline letter was also issued, citing the grounds for the decline.

The Complainant was also advised of her right to appeal to the Credit Review Office. The Complainant contacted the regional head on **25 January 2018** and was extremely irate as a result of the decision of the Credit Appeals Team. Not having seen the decline letter, the regional head said he would look into the matter and either he or the Business Advisor would contact the Complainant. The Business Advisor rang the Complainant later that day. The Complainant requested proof that 2016 financial accounts were sought. The Business Advisor confirmed the Underwriting Department had requested the 2016 financial accounts.

On **26 January 2018**, the Complainant's partner emailed a spreadsheet showing costs, drawings and expenses for **2016**. On **5 February 2018**, the Complainant sent a lengthy email to the Business Advisor and the CEO outlining her frustrations regarding the Provider and the consequences of its decision to decline the stocking loan.

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An internal conference call between the regional head and Underwriting Department was held to discuss the additional information provided but this information was not sufficient to overturn the decision, and a letter explaining this issued on the same day.

The Complainant sent an email to the provincial head and the CEO on **13 February 2018** in relation to the outcome of her appeal. The Complainant also raised complaints in respect of staff members' handling of the loan application and the documentation sought at the difference stages. The provincial head spoke with the Complainant on **14 February 2018** informing her that a full record of events was being compiled. The Complainant was also advised that the regional head would not be contacting her by phone as there was nothing further to add and that follow-up communication would be by email. A Final Response letter was issued on **16 February 2018**.

The Complainant emailed the provincial head and the CEO on **20 February 2018** requesting they respond to her claims that the Provider did not adhere to the General Principles of the Small and Medium Lending Code 2016. A follow-up email was sent on **2 March 2018**. A letter was issued by the Complainants Department on **5 March 2018**.

On **6 March 2018**, a Network Account Manager contacted the Complainant to discuss the existing stocking loan which was in arrears. The Provider remarks that the Complainant would not provide any information or make any proposals regarding the payment of the loan. A letter issued to the Complainant on **8 March 2018** advising her that the loan had been transferred to the Recoveries Department. The Recoveries Department left a voicemail for the Complainant on **21 March 2018**.

The Complainant emailed the CEO on **23 March 2018** advising that she was still waiting for a reply to her emails. The Complainant also stated that she received a call from the Recoveries Department and the agent was *highly unprofessional*. The Complainant's email was acknowledged by the CEO's office on the same day. A letter issued from the Complainants Department on **28 March 2018** advising the Complainant that its letters of **16 February** and **5 March 2018** were the Final Response to her complaint.

The Provider has outlined further contact from its Recovery Department and correspondence from the Complainant to the CEO regarding her formal complaint. The Provider explains the Complainant was advised of her right to appeal the decision on her loan application to the Credit Review Office and of her right to make a complaint to this Office.

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Two senior staff members met with the Complainant on **25 May 2018** as part of a fact find to understand all of the matters the Complainant wished to raise. The Provider's agent advised they would take these issues away and revert to the Complainant within the agreed timeframe of two weeks. A letter issued on **6 June 2018** in response to the complaint regarding the handling of the declined stocking loan. The Complainant was also offered €250 in final settlement of her complaint. The Provider explains this was credited to the Complainant's account. This was followed by further correspondence between the parties. The Provider also refers to an internal email sent to the Complainant in error which contained an agent's opinion that the Provider should disengage with the Complainant given the number of interactions she had with several staff members and that she had been directed to the Credit Review Office and the Office of the Financial Services and Pensions Ombudsman. This was followed by further correspondence.

The Recovery Department wrote to the Complainant on **6 August 2018** in respect of the exiting stocking loan advising that she was now *not co-operating*. The Complainant sent a *Business Credit Appeal* form to the Recovery Department on **14 September 2018** in respect of being classified as *not co-operating*. The Provider advises that, unfortunately, due to the contents of the appeal form, the Recovery Department misinterpreted the appeal as relating to the declined stocking loan and forwarded it to the Credit Appeals Team. Once reviewed by this team, it was noted that a formal appeal had already been made and no further action was taken. The Provider acknowledges that as a result of this misunderstanding, it failed to adhere to the Lending to Small and Medium Sized Enterprises Regulations 2015 (the **SME Regulations**) as it did not issue an acknowledgement letter within 5 working days after receipt of the appeal and a letter was not sent to the Complainant with the outcome of the appeal.

On **15 October 2018**, the Recovery Department issued a letter to the Complainant asking her to close her business account. A telephone conversation then took place with the Recovery Department on **22 October 2018**. The Provider acknowledges that when the Complainant advised the Account Manager that her appeal was in relation to being deemed *not co-operating*, the Account Manager should have initiated the appeals procedure. However, the Provider submits that it is imperative to bear in mind that at no point prior to the *not co-operating* letter being issued in **August 2018** or to date, had the Complainant provided a proposal on how she intended to clear the existing stocking loan.

The Recovery Department issued a 60 day notice to close the business account on **31 January 2019**. A formal demand in respect of the stocking loan was issued on **27 March 2019** by the Provider. A further 60 day notice was sent on **5 April 2019** as there had been a credit balance on the account. By letter dated **5 June 2019**, the Complainant was advised of the withdrawal of her business credit card.

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The Complainant contacted the Provider in respect of the withdrawal of the business card on **26 July 2019** explaining that she was not advised of this. The Provider's agent advised the Complainant that a request would be made to re-issue the relevant letter. Following a telephone conversation on **30 August 2019**, a further 60 day notice issued to the Complainant.

The Provider has also furnished statements prepared by the various staff members who interacted with the Complainant.

The Complaints for Adjudication

The complaints are that the Provider:

1. Failed to communicate with the Complainant;
2. Provided poor customer service when dealing with the Complainant's appeals and/or complaints;
3. Cancelled the Complainant's credit card account and banking facilities; and
4. Failed to comply with its obligations under the SME Regulations.

The Complainant explained in an email to this Office dated **29 August 2019** and after the submission of her official complaint that her personal account was *locked*. The Complainant has also furnished a letter from the Provider titled *Termination of Overdraft and Account Closure* dated **21 March 2019**. This letter relates to an account that is not the subject of this complaint and appears to be a joint account held by the Complainant and another individual. This individual is also not a party to this complaint. In these circumstances, I do not consider the Provider's conduct regarding this joint account to form part of this complaint. Therefore, these matters have not been investigated as part of this complaint and do not form part of this Decision.

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.

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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.

A Preliminary Decision was issued to the parties on 25 November 2020, outlining my preliminary determination in relation to the complaint. The parties were advised on that date, that certain limited submissions could then be made within a period of 15 working days, and in the absence of such submissions from either or both of the parties, within that period, a Legally Binding Decision would be issued to the parties, on the same terms as the Preliminary Decision, in order to conclude the matter.

Following the issue of my Preliminary Decision, both parties made further submissions, copies of which were exchanged between the parties.

Having considered these additional submissions and all submissions and evidence furnished by both parties to this Office, I set out below my final determination.

Prior to setting out my decision, it should be noted that during the course of the post Preliminary Decision submissions, both parties have made a number of statements regarding a disputed event which occurred at one of the Provider's branches regarding the interaction between the Complainant and the branch staff.

Additionally, the Complainant has made a number of submissions in the post Preliminary Decision submissions regarding a separate loan and the Provider's charging of interest on this loan. The Complainant has also raised concerns over the Provider's alleged failure to properly close an account in 2008 and the Provider's action in continuing to charge the Complainant *"account fees for an account they closed almost three years ago"*.

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These matters were not part of the original complaint to this Office and, therefore, have not been investigated as part of this complaint and do not form part of this Decision.

Background

The Complainant entered into a stocking loan agreement with the Provider pursuant to a Sanction Letter dated **20 September 2016**. The amount of credit extended on foot of this facility was €40,000 which was repayable by **13 September 2017**.

The Provider wrote to the Complainant on **25 September 2017**, advising that it had conducted a review of the Stocking Loan to determine whether the *financial difficulties* section of the SME Regulations should be applied. The Provider took the view that this section did not apply as “... we understand from our review that the arrears situation on your Account is short term in nature and will be cleared within a timeframe satisfactory to the Bank.”

The Complainant sought to apply for a stocking loan during a telephone call on **9 November 2017**. Also, during this telephone conversation and in two emails on **9 November 2017**, the Complainant outlined the position of the business, discussed the Stocking Loan, and the importance of securing a further stocking loan. The Provider’s Business Lending Department contacted the Complainant by telephone on **13 November 2017** to discuss and complete the loan application. The Provider wrote to the Complainant on **16 November 2017** to advise that in line with its business credit process and its obligations under the SME Regulations, standard practice was to revert to customers with a credit decision within 15 working days of receiving all relevant information. However, in this instance, due to administrative issues, it would not be possible to revert to the Complainant within this timeframe. The Provider explained that it would revert to the Complainant by **30 November 2017**.

Recordings of calls between the Complainant and the Provider have been furnished in evidence. I have considered the contents of those calls.

Despite this, the Provider issued its credit decision on **20 November 2017** declining the stocking loan application and listed five reasons for this decision. The Complainant was also advised of her right to appeal through an internal credit appeals process, and if dissatisfied with the outcome of the appeal, her right to refer the matter to the Credit Review Office. The letter also explained that to initiate the appeals process, a *Business Credit Appeal Form* was required to be completed and submitted to the Provider. The Provider contacted the Complainant by telephone on **20 November 2017** to advise her of this decision.

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The Provider's agent explained the reason for any delay in assessing the application was due to the complexity of the case and discussions with the Underwriting Department. The Complainant indicated that she wished to appeal the decision and explained the loan was fundamental to the future of her business. The Provider's agent advised that he would submit an appeal for the Complainant. The Complainant became quite annoyed during this telephone conversation. However, the Provider's agent dealt with the Complainant in a courteous and professional manner throughout.

Shortly after this, another of the Provider's agents telephoned the Complainant on **20 November 2017**, to discuss the overdue Stocking Loan. The Stocking Loan was not discussed as the Complainant stated that *"I'll tell you what. I'll do what they did to me. I'll get back to you in 24 hours."* However, the Complainant does not appear to have followed up with the Provider regarding this call. The Provider's Business Collections unit wrote to the Complainant on **20 November 2017** in respect of the Stocking Loan noting that repayment of the loan remained overdue and requested the outstanding balance be lodged to the account.

The Complainant telephoned the Provider on **21 November 2017** to request an update regarding the status of her appeal. The Complainant seemed to have been under the impression that she would have a decision on her appeal within 24 hours. However, an assurance of this nature does not appear to have been given to the Complainant in the course the previous day's conversation. During that conversation, the Provider's agent confirmed that an appeal had been submitted. The Provider's agent advised that she would ask the relevant agent to notify the Complainant of the decision on the appeal as soon as possible. The Complainant became annoyed with the Provider's agent during this conversation as she believed the agent was not listening to what she was saying and then asked to speak to a manager. Having listened to this conversation, I am satisfied the Provider's agent dealt with the Complainant in a courteous and professional manner.

The Complainant telephoned the Provider on **22 November 2017**, seeking an update in respect of her appeal. The Provider's agent spoke with her colleague who was dealing with the appeal and advised the Complainant that no decision had been reached but it had been requested that the appeal be treated as a priority. Later that evening, one of the Provider's agents telephoned the Complainant to advise her that the application had been declined on appeal and explained the reasons for the decision. This Provider's agent explained this was an informal appeal but there was the option of a formal appeal. It was also outlined that the Complainant could refer the matter to the Credit Review Office. The Provider's agent asked how the Complainant wished to proceed.

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The Complainant requested a letter outlining the reasons for the decision to decline the application and a record of all of her borrowings to date.

Following this, the Complainant emailed the Provider's CEO on **22 November 2017** in respect of the decision to decline the loan. The Provider wrote to the Complainant on **24 November 2017** outlining the reasons for its decision to decline the loan and advised the Complainant of the appeals process.

On **27 November 2017**, the Complainant telephoned the Provider regarding a letter she had received outlining the reasons for the Provider's decision to decline the loan application, remarking the letter was misleading in that the reasons conveyed to her on a previous telephone conversation were inconsistent with this letter. The Provider's agent explained the reasons contained in the letter were general reasons and not all would relate in the Complainant's case. The Provider's agent apologised that the reasons were not clear and explained the specific reasons for the decision.

The Provider's agents met with the Complainant at her office on **1 December 2017**. The Complainant has provided a recording of this meeting which I have considered. After this meeting, one of the Provider's regional heads wrote to the Complainant on **1 December 2017** explaining:

"... We hope we can continue to support you and the business going forward. As discussed, I have cc'd ..., our SME specialist on this email, so you can make contact with [her] at any stage regarding a revisit of the credit application. In order to progress this, we will need the following:-

- 1. Details of outstanding debtors (spreadsheet/debtors ledger to suffice)*
- 2. Inventory of Stock at hand – value based on current level of retail/online sales.*
- 3. Statement from [Mortgage Loan Provider] showing up to date.*

Once you have these items, please contact [the SME Specialist] and we would be happy to facilitate revised application."

The Complainant wrote to the Provider on **5 December 2017** with details of the business's outstanding debts and stock position. The Complainant also indicated that she would get her partner to call to their local Mortgage Loan Provider's branch to get the required statement regarding the mortgage loan.

The regional head responded to the Complainant on **10 December 2017** and apologised for the delay in replying as it seemed her email went to his spam mailbox. The SME Specialist was copied on this email where it was requested that she make contact with the Complainant the coming Monday with a view to progressing a revised stocking loan application.

Following this, it appears the SME Specialist attempted to contact the Complainant but was unable to speak to her because, as explained by the Complainant in an email dated **13 December 2017**, she was in London. In a separate email of the same date, the Complainant supplied a copy of a letter from her Mortgage Loan Provider.

The Provider's Business Lending Department telephoned the Complainant on **14 December 2017** to discuss the outstanding balance on the Stocking Loan which stood at €13,444.63 and the need to clear the loan. The Complainant explained that she was dealing with other more senior people within the Provider regarding the loan application and when that was resolved, she would deal with Stocking Loan.

The SME Specialist wrote to the Complainant on **18 December 2017** attaching a *Business Credit Appeal Form* and advised that she had spoken to Complainant's accountant and was advised the accountants were checking on the status of the 2016 accounts.

Responding the same evening, the Complainant attached a completed appeal form and explained:

"I have completed those docs and attached them to here but I am a little confused as when [agents] came out to the office on the 1st this appeals process was already in motion so do you know why these forms are now required?"

The Business Collections unit wrote to the Complainant on **18 December 2017** in respect of the Stocking Loan advising that the *financial difficulties* sections of the SME Regulations applied. The letter also referred to an SME information booklet which was enclosed with this letter which the Provider explained set out the type of financial information required to enable the Provider to complete an assessment for an alternative repayment arrangement. The letter also outlined the information required by the Provider to complete its assessment and stressed the importance of engaging with it.

The SME Specialist wrote to the Complainant's account on **19 December 2017**, requesting the 2016 accounts. A further email was sent on **29 December 2017**.

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The Complainant wrote to the Provider's regional head and copied the CEO in an email on **15 January 2018** stating that *"[i]t has been over six weeks since you called to our office and a number of weeks since I sent over the confirmation from our mortgage company that our mortgage was up to date. This was the outstanding part of the appeal for our stocking loan ..."* The CEO's office responded on the same day and informed the Complainant that the regional head had been asked to provide an update on her credit application. Minutes later the regional head advised the Complainant that:

"... Following on from our meeting, I have been keeping a close eye on the progress of the appeal, and I know you were communicating with [the SME Specialist] last week regarding outstanding financial accounts for 2016? Have you got these yet, and if so can you forward copy of same?"

In a further exchange of emails, the Complainant advised the Provider that *"[o]ur accountant hasn't furnished same to us so we don't have access to them ... it's now becoming apparent that we are rather low on his list of priorities. ..."* The regional head replied that the SME Specialist *"... has been dealing with your application and advised on the 18th Dec of the requirement for 2016 accounts with confirmation of tax affairs. This was requested by the underwriter. [The SME Specialist] will contact you tomorrow to reconfirm the reasoning for this request. ..."* In response, the Complainant furnished a Tax Clearance Certificate and expressed her frustration the Provider's requests for additional information.

The Provider's Business Lending Department contacted the Complainant by telephone on **17 January 2018** to explain the reason for delay in processing her appeal was that the Provider was waiting for financial information from the Complainant's accountant and that it was experiencing difficulty obtaining this information. The Complainant was asked if she would be happy to progress the appeal without this financial information or wait until it was available.

The Complainant expressed her dissatisfaction with the fact further and additional information was being requested by the Provider which was not originally sought. The Complainant indicated that she might be in a position to send the accounts by the end of the week, but she was experiencing difficulties with the accountant assigned to her by her local authority and the preparation of her accounts was not a priority for this individual. At the end of the conversation, the Complainant agreed to proceed with the appeal in the absence of the 2016 financial accounts and that she would forward the accounts when she had them.

The Credit Appeals unit acknowledged receipt of the *Business Credit Appeal* on **18 January 2018**. The Complainant was informed by letter dated **23 January 2018** that her internal credit appeal was declined.

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The letter explained that:

“... we wish to advise you that we remain unable to provide the credit facilities as sought for the following reasons:

- *Repayment capacity is not evident from the financial information provided*
- *Management figures for December 2015 are incomplete*
- *Management figures for December 2016 & 2017 are not available*

We would like to inform you that, should you remain dissatisfied with our final decision, you have the right to present your case, and our decision, to the Credit Review Office for their consideration. ...”

The Complainant's partner emailed the SME Specialist on **26 January 2018** with a “... summary of 2016 costs including personal drawings. These do not include PayPal (website) sales which I believe you have seen sight of already.” The Complainant wrote to the Provider on **5 February 2018**, addressing and taking issue with each of the reasons advanced in the letter of **23 January 2018** for rejecting the appeal. The Provider responded to the Complainant on **6 February 2018** explaining that the decision of its Credit Appeals Unit remained unchanged. The letter also referred to the Provider's offer of a meeting with the Complainant which was declined, and the Complainant's right to refer the matter to the Credit Review Office.

On **13 February 2018**, the Complainant outlined to the Provider that her emails were not responded to nor were her calls returned. The Complainant also referred to the fact that an appeal was not lodged on her behalf but a new credit application was made instead, the delay in this regard, and the information being sought by the Provider. In addition, the Complainant made the point that 2015 and 2017 accounts were not requested, and a Tax Clearance Certificate was not sought prior to **10 January 2018**. This appears to have been treated as a formal complaint with a Final Response letter issuing on **16 February 2018**. This letter stated:

“I understand that you applied for a loan in November 2017 and you are dissatisfied that the application had been declined.

... In the case of your application, and the information provided to our credit department, they advise the decline was due to insufficient demonstration of repayment capacity.

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As per the letter dated 6 February 2018 from [the regional head], our Credit Appeals Unit have confirmed that the decision of the 23 January 2018 remains unchanged.

I note that you provided [the Provider] with your 2016 financial accounts on 15 February 2018 and a colleague will be in contact with you regarding arrangements for a fresh application, should you wish to proceed with same.

I would like to inform you again, that should you remain dissatisfied with our final decision, you have the right to present your case, and our decision, to the Credit Review Office for their consideration. ...”

By email dated **20 February 2018**, the Complainant wrote to the Provider highlighting matters previously brought to the Provider’s attention and the manner in which she believed the Provider failed to adhere to a number of provisions of the SME Regulations and the **Code of Conduct for Business Lending to Small and Medium Enterprises** (the **SME Code**).

The Complainant wrote to the Provider again on **2 March 2018**. The Provider wrote to the Complainant on **5 March 2018** referring to her complaint and a telephone conversation of **22 February 2018**. The letter acknowledged that while the Provider’s response may not be the desired outcome, the Complainant had the right to refer the matter to the Credit Review Office and/or this Office.

The Head of Collections wrote to the Complainant on **8 March 2018** to notify her that the management of the business account was being transferred to the Recoveries Department, and that chequebooks and debit cards would no longer auto issue. If such facilities were needed, the Complainant was required to contact a specific telephone number.

The Complainant emailed the Provider, including its CEO, on **23 March 2018** to express her dissatisfaction at a telephone call she had received. This letter was acknowledged on the same date. The Provider wrote to the Complainant on **28 March 2018** advising that its letters dated **16 February** and **5 March 2018** were its Final Response on the matter. On **17 April 2018**, the Complainant maintained the position that the Provider had failed to address the issues identified by her regarding her appeal and its failure to adhere to the SME Code. The Provider responded on **20 April 2018**, assuring the Complainant that it “... *fully considered all the points raised previously by you and in particular your email of 20 February 2018 in relation to the general principles you outlined.*” The letter advised that the matter was fully investigated and would not be reviewed any further. The Complainant telephoned the Provider on **24 April 2018** expressing the view that the issues raised by her had not been addressed.

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The Provider's agent explained that the Provider had progressed the matter as far as possible and exhausted all avenues. It was explained the Provider would not be dealing with the matter any further and the Complainant had the option to bring the matter to the Credit Review Board and/or this Office.

On **1 May 2018**, the Recoveries Department wrote to the Complainant referring to a previous letter dated **18 December 2017** noting that the *financial difficulties* section of the SME Regulations applied to the Stocking Loan. This letter advised the Complainant that she had failed to engage with the Provider and for the Provider to deal with this loan account under the SME Regulations, the Complainant was required to co-operate with the Provider to allow it to carry out an assessment of her financial circumstances.

The Complainant wrote to the Provider on **8 May 2018**, regarding the manner in which she was being treated in particular, its failure "*... to reply to my numerous items of correspondence, dating from February*" Towards the end of this email, the Complainant addressed the letter received from the Recoveries Department:

"... You have further added insult to injury today, by sending us a letter claiming that we have breached the SME lending rules by not contacting you regarding the outstanding stocking loan, the one that your own actions caused us to be unable to pay.

It's rather confusing because in this instance your bank seems to feel that the rules regarding lending to SME's are in existence, however, your conduct over the last six months has been a direct contradiction of these said rules, and which you feel we should now adhere to but clearly, you have felt that you haven't had to afford us the same rights during this entire debacle. Either the rules apply to use all or they don't apply at all. ..."

The Provider advised the Complainant that its position remained unchanged in a letter dated **10 May 2018** and that two of its directors would be happy to meet with the Complainant to discuss the matter. The parties met on **25 May 2018**. This was followed by a letter from the Provider dated **6 June 2018**. This letter contained the directors' assessment of the Provider's handling of the Complainant's case, stating:

"Credit Decision

Since our meeting I referred your loan application to the Head of Credit Underwriting to review again.

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On re-examination of the application he is satisfied that you were not in the same financial position in December 2017 as you were in September 2016 when your previous stocking loan was approved. In particular you have an outstanding loan to repay. As discussed at our meeting the non-adherence to your stocking loan terms and conditions (it has not been repaid on time and there is a balance outstanding) and the operation of your current account were very important factors in the decline.

The lending application has been processed, reviewed, appealed on 2 occasions and subsequently assessed by the Head of Underwriting on 2 further occasions. ...

If you wish to take your concerns further then I recommend you present your case and our decision, to the Credit Review Office for their consideration. ...

Review of customer touchpoints

I confirm that I have also reviewed all calls, emails and notes relating to your loan application in December 2017. It was evident at times that the service provided fell short of the high expectations that we set ourselves at [the Provider]. In particular I want to apologise for the delayed decisions, the lack of clarity in relation to information required, the tone of some of the conversations that took place and the lack of follow through in relation to your specific questions.

As a gesture of apology and goodwill I will arrange a credit of €250 to your current account. ...”

The Complainant responded on **7 June 2018** as she was *bitterly disappointed* with the “... *lack of in depth discussion of the various issues I have been waiting to be dealt with for months. ...*” The Provider wrote to the Complainant on **14 June 2018** confirming the reasons for declining the loan application.

The letter also discussed the 2015, 2016 and 2017 financial accounts, the company’s financial position, repayment capacity, appeals and underwriting reviews.

The Complainant was mistakenly copied on an internal email on **15 June 2018** which expressed the view that “... *if [the Complainant] comes back after this we should disengage. She has to be directed (yet again) to Credit Review/FSPO. The Bank has been very generous with its time, letters and listening.*” This was following by several emails from the Complainant in **June 2018**. In particular, the Complainant voiced her displeasure with the Provider’s conduct in a lengthy email dated **29 June 2018**.

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The Recoveries Department wrote to the Provider on **6 August 2018** to notify her that she had been classified as *not co-operating*. The letter also outlined the option to appeal this classification.

Referring to the Complainant's emails of **20 February** and **29 June 2018**, the Provider explained in a letter dated **10 August 2018** that:

"... Though you are unhappy with the timeframes for processing the loan application I confirm that the Bank adhered to its own processes and to all its regulatory obligations. The lending application was complex and the Bank required additional time to present a viable lending application for your business. The timeframes for the initial loan application are outlined below and the loan application was completed within the SME time period of 15 business days.

In addition I acknowledge that there was a substantial amount of documentation required during the application process but this was required to ensure that your application was fully assessed and considered by the Bank.

Consequently, the Bank may request supporting documentation current year account, confirmation of borrowings from other financial institutions or sales figures. While this may add to the time to complete the application it is absolutely necessary for underwriting and to ensure the correct information is factored into the loan application. It is worth noting that while your application took some time to complete following requests for additional information; such requests were made with a view to optimising the chance of loan approval. It is also worth noting that despite the additional time taken to complete the application, it was completed within the time periods set out within the SME regulations.

...

For the purpose of absolute clarity the Bank will not be responding to any further correspondence from you in regard to this matter. Accordingly, this is our final response to you. ..."

The Provider also enclosed a 9 page document demonstrating its compliance with each of the provisions of the SME Code reference by the Complainant in her email of **20 February 2018**.

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A *Business Credit Appeal Form* dated **14 September 2018** was submitted by the Complainant. The purpose of the appeal selected by the Complainant was: *"Your appeal relates to financial difficulties and you have been classified as 'not co-operating' by the Bank as set out in the SME Regulations."* Explaining the basis of her appeal, the Complainant wrote:

"Our loan was denied last Nov and as such [the Provider] was informed we would not be able to repay the remaining balance and assistance was requested. It took almost 10 months for [the Provider] to deal with an appeal, which was not carried out as per the SME regulations, [the Provider] has not provided the meeting to discuss this loan, even though it's now almost a year on. [The Provider] has intentionally delayed matters in order to cause further arrears. This matter is being passed to the Ombudsman."

The Recoveries Department issued an *Account Closure* letter on **15 October 2018** in respect of the Complainant's business account. The letter gave the Complainant 2 months' notice in respect of the closure of her account. It was also stated that on the expiry of this period *"... any implied overdraft facilities ... will be cancelled [and] any cards, direct debit and standing order instructions ... will be cancelled and all direct debits, cheques and other debits presented on the Account will be returned unpaid."* Letters in similar terms were issued on **31 January, 5 March** and **30 August 2019**. A formal demand for repayment of the Stocking Loan was sent to the Complainant on **27 March 2019**.

The Complainant telephoned the Provider on **22 October 2018** regarding a letter she received in respect of the closure of her bank account and wished to query the reason for the closure. The Provider's agent explained there was a term loan due relating to the Complainant's business and that no proposals had been provided to address this loan.

The Complainant explained that she had previously submitted an appeal regarding her classification as *not co-operating* which had yet to be responded to. The Provider's agent advised that he would pass the matter on to the Complainant's account manager who would contact the Complainant. The Complainant was then transferred to her account manager and explained she hand delivered an appeal regarding her classification. The account manager acknowledged that an appeal was received, (but this acknowledgment seemed to relate to an appeal concerning the loan application), and a 14 page letter was issued to the Complainant addressing the issues raised by the Complainant. The Complainant corrected the Provider's agent advising that the letter being referred to related to a different matter. However, the Provider's agent failed to appreciate or accept this particular appeal was made.

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I am not satisfied the Provider's agent gave appropriate weight to what the Complainant was trying to explain and did not attempt to ascertain whether any such appeal had been made.

The Provider's agent maintained the position that the Provider would not be willing to engage with the Complainant otherwise than on the basis of the Stocking Loan being repaid.

Analysis

The Stocking Loan Application

The Complainant applied for a stocking loan on **9 November 2017**. The application was acknowledged on **16 November 2017**, and ultimately declined on **20 November 2017**. During a telephone conversation on **20 November 2017**, the Complainant indicated that she wished to appeal the Provider's decision. An informal appeal appears to have taken place in or around **21 November 2017** with the Provider communicating its decision to decline the appeal by letter dated **24 November 2017**.

The Complainant telephoned the Provider on **27 November 2017** expressing the view that the reasons for the decision to decline her appeal were misleading and not consistent with the reasons conveyed to her during a previous telephone conversation regarding the rejection of her loan application. This was acknowledged by the Provider's agent who explained that the letter contained general reasons for the Provider's decision to reject appeals and not all were applicable to the Complainant. Having reviewed the Provider's letter of **24 November 2017**, I believe that it was not appropriate to state general and non-applicable reasons for declining credit applications or appeals especially if these are not relevant to the Complainant's case. This is misleading and likely to cause confusion. Further to this, I do not consider such conduct to be consistent with section 10(1) or section 16(1)(a) of the SME Regulations or section 12 of the SME Code.

The Provider maintained in correspondence with the Complainant that a second informal appeal took place on **28 November 2017** which was assessed and declined by the Underwriting Department on **30 November 2017**. This is disputed by the Complainant who contends this appeal never took place. The Provider has not demonstrated that a second informal appeal did in fact take place. It is not clear if or when this was requested by the Complainant, the Provider has not identified any internal documentation to show an appeal was carried out, and there is no evidence of the outcome of this appeal being communicated to or discussed with the Complainant.

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During the meeting at the Complainant's premises on **1 December 2017**, she was advised, amongst other matters, of the need to provide new/additional information to support a further application or appeal. This additional information was outlined at the meeting and again in an email from the Provider later that day. This information was forwarded by the Complainant on **5 and 13 December 2017**. The Complainant was provided with a *Business Credit Appeal Form* by email dated **18 December 2017**. The Complainant was also advised that the Provider was checking on the status of the 2016 financial accounts with her accountant.

This appears, on the basis of the evidence presented, to be the first reference to 2016 financial accounts. The earlier meeting with the Provider's agents together with the email of **1 December 2017** created the impression that once the information requested on that day was provided, a *revised credit application* could be made. The Complainant was not informed that a *Business Credit Appeal Form* would have to be completed or the need for 2016 financial accounts. This only became apparent on **18 December 2017**. The Provider should have made clear the precise information required from the Complainant and the type of application that was being made on her behalf – whether a revised application or an appeal. However, notwithstanding this, the 2016 financial accounts were requested within a reasonable time of the meeting and the date on which the Complainant forwarded the remainder of the information initially requested.

The Complainant's appeal was not submitted/formally acknowledged until **18 January 2018**. This is because of the delay in obtaining the 2016 accounts. However, it was agreed that the appeal should proceed in the absence of this information. While the 2016 accounts could have been requested at a slightly earlier point in time, I am satisfied the Provider was reasonably entitled to seek this information. The delay associated with the provision of the accounts appears to have been due to the Complainant's accountant and this delayed the submission of the Complainant's appeal. As such, I am not satisfied any delay in this regard was caused by the Provider.

The Complainant was advised on **23 January 2018** that her appeal had been declined. At bullet points two and three of the Provider's reason for declining the appeal, it is stated that its decision was based on management figures for 2015 being incomplete and not available for 2016 and 2017. However, it is not clear when *management figures* were requested from the Complainant. If the Provider was going to base its decision on particular information, the Complainant should have been made aware of this and given the opportunity to provide it. There is no evidence of this occurring.

The Complainant made a formal complaint to the Provider on **13 February 2018** in respect of the manner in which her loan application and appeals were treated. A Final Response letter was issued three days later, on **16 February 2018**.

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Having considered the complaint made by the Complainant and the Final Response issued by the Provider, I am not satisfied this properly deals with the issues raised by the Complainant. It is a very general and vague response to very specific issues raised by the Complainant.

In an email dated **20 February 2018**, the Complainant expressed her dissatisfaction with the Provider's response and its failure to address the issues raised. The Provider responded to this email on **5 March 2018**, where it re-affirmed its position on the matter. This was followed by a further series of correspondence in a similar vein.

Following a meeting on **25 May 2018**, the Provider wrote to the Complainant on **6 June 2018** in respect of its handling of her case acknowledging that certain aspects of the service provided to the Complainant did not live up to the Provider's high expectations.

The Provider wrote to the Complainant again in a very comprehensive manner on **10 August 2018** addressing the matters raised by the Complainant on **20 February** and **29 June 2018** and enclosed a separate document outlining the Provider's compliance with the SME Code. Having considered these documents, a response along these lines should have been sent to the Complainant as part of the Provider's Final Response to her complaint.

The Existing Stocking Loan

The Stocking Loan was due to be repaid by **13 September 2017**. However, while a substantial amount was repaid prior to its expiry, approximately €14,000 remained outstanding at the expiry date. From around **20 November 2017**, the Provider wrote to and telephoned the Complainant regarding the repayment of this loan. In particular, the Provider wrote to the Complainant on **18 December 2017** asking that she engage with the Provider and provide certain information to enable an assessment for an alternative repayment arrangement to be put in place. There does not appear to have been any engagement on the part of the Complainant in this regard. By letter dated **8 March 2018**, the Provider wrote to the Complainant to inform her that the management of her business account was being transferred to the Recoveries Department and that her banking facilities were being restricted. The Provider wrote again to the Complainant on **1 May 2018** noting her failure to engage with the Provider and the need to co-operate regarding the assessment of the Stocking Loan. On **6 August 2018**, the Complainant was advised that she was being classified as *not co-operating*.

It seems to be the case that the Complainant believed as she was engaging with and pursuing the Provider in respect of the stocking loan application that she was, in turn, engaging with the Provider in respect of the Stocking Loan. However, I do not believe this was a prudent course of action as the Complainant's obligations in respect of the repayment of the Stocking Loan were separate and distinct from her loan application and the associated appeals; irrespective of whether or not the Complainant believed the Provider's refusal to approve her loan application was preventing her from repaying the Stocking Loan.

This was clear from the telephone conversations and correspondence relating to the repayment of the Stocking Loan. Further to this, a separate department within the Provider was communicating with the Complainant regarding the repayment of the Stocking Loan.

The term *not co-operating* is defined in section 2 of the SME Regulations as:

"... a situation in which—

(a) the borrower has failed to make a full and truthful disclosure to the regulated entity of the information required by the regulated entity to assess the borrower's financial situation, within the timeframe specified by the regulated entity,

(b) the warning letter, required in accordance with Regulation 20(8), has been issued to the borrower, and

(c) the borrower has not carried out the action or actions within the timeframes specified in the letter referred to in subparagraph (b);"

The evidence shows that the situation regarding the Complainant's existing stocking loan met the definition of *not co-operating* within the meaning of the SME Regulations. Therefore, I accept that the Provider was reasonably entitled to classify the Complainant as *not co-operating*.

The Complainant submitted a *Business Credit Appeal Form* dated **14 September 2018** appealing her classification as *not co-operating*. This appeal was misdirected by the Provider and this has also been acknowledged by the Provider. As noted above, the Complainant attempted to bring the appeal to the attention of the account manager during the telephone conversation on **22 October 2018** but, owing to the position and attitude adopted by the account manager, she failed to understand what the Complainant was telling her.

The Complainant had a further conversation with the same account manager on **30 August 2019** and legitimately raised the point that her appeal had not been dealt with. Having considered these calls, I am not satisfied the account manager dealt with this particular issue in an appropriate manner and was rather dismissive of it.

It is disappointing that the Complainant's appeal was misdirected by the Provider. However, this was compounded by the fact the appeal does not appear to have ever been actioned or responded to by the Provider, and the account manager's handling of the matter when it was brought to her attention.

Following the Complainant's classification as *not co-operating*, the Provider took a number of steps in respect of the Complainant's business account which culminated in the closure of the account and the cancellation of the credit card associated with the account. As noted above, I am satisfied the Provider was entitled to classify the Complainant as *not co-operating* and, having considered the reasons for the Complainant's appeal of this decision, the circumstances regarding the Stocking Loan and the Provider's submissions of this matter; I am not satisfied the Complainant's classification as *not co-operating* is likely to have changed following an assessment of her appeal.

Therefore, I am satisfied the Provider was entitled to close the Complainant's business accounts and cancel any debit or credit cards associated with those accounts. Further to this and the Complainant's appeal aside, I am satisfied the Complainant had sufficient notice of the Provider's intended actions in this regard.

I note that the Provider has paid a sum of €250 to the Complainant for its shortcomings. However, I do not believe this to be sufficient in the circumstances.

For the reasons outlined in this Decision, I partially uphold this complaint and direct the Provider to pay a sum of €3,000 to the Complainant. I direct that this sum be paid off any balance outstanding on the stocking loan. In the event that no balance is outstanding on this loan, I direct that this sum be paid to an account of the Complainant's choosing.

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) and (g)**.

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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 in the sum of €3,000. I direct that this sum be paid off any balance outstanding on the stocking loan. In the event that no balance is outstanding on this loan, I direct that this sum be paid 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 (if applicable), 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

2 December 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.