



<u>Decision Ref:</u>	2021-0538
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Repayment Mortgage
<u>Conduct(s) complained of:</u>	Dissatisfaction with customer service Refusal to grant mortgage
<u>Outcome:</u>	Rejected

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

The complaint concerns the handling of the Complainants' mortgage loan application by their Bank (the Provider).

The Complainants' Case

The Complainants explain that they were "moving mortgage" on the advice of a financial broker. The Complainants say that their mortgage loan is with a financial Services provider and is in good order. The First Complainant says the Complainants never missed a payment, that he never missed a payment on any loan of any kind, and that he has a zero balance on his credit card.

The Complainants explain that they were re-mortgaging and moving provider to undertake home renovations. The First Complainant says the Complainants' home was valued at €350,000.00 and the mortgage loan application was for €220,000.00. The First Complainant says the current mortgage loan balance was approximately €160,000.00 and the LTV [loan to value] was below 50%.

The Complainants say they provided an extensive list of documentation in support of their application, including current account statements, payslips, company accounts from the First Complainant's business, details of tenders demonstrating the pricing in respect of the use of the funds for the home renovations, details of the Complainants' mortgage loan, personal loans (the Second Complainant had a car loan), savings, other sources of income, childcare expenses and weekly living expenses.

Despite this, the Complainants say the Provider *"kept reverting for what I certainly deemed to be wholly unnecessary levels of evidence for what was a straightforward loan application that we could service."*

The Complainants say they *"gave up on the application due to levels bureaucracy involved in this process"*. The Complainants say they were at a loss of professional architect fees, engineer fees and wasted time, energy and effort tendering for a builder for the renovations. The First Complainant says the Complainants were forced to give up on the application as the builder could not wait any longer and that the Provider had dragged out the application.

The Complainants say they were using a broker to manage their application. As far as the Complainants were concerned, they say that all necessary proofs had been submitted.

The First Complainant says he was unduly discriminated against because he was a company director. The First Complainant explains that he set up a business four years prior to submitting a Complaint Form to this Office and employed five people at the time. The First Complainant explains that:

"I am owed loans by my business. All loans made by me to my business are technical in nature and relate to accrued salary, travel, expenses and other routine items that build up as you build a business, debt-free from the ground up. The company is profitable when directors loans are excluded from the liabilities (I am not going to foreclose on my own company and lose my life's savings)."

The Complainants say the Second Complainant has been directly impacted by the Provider's conduct. They state that the Second Complainant services the full mortgage loan without any issue and that he was going to fund the modest increase in mortgage loan repayments (as the Complainants were keeping the mortgage loan to the same timeline).

In resolution of this complaint, the Complainants state, as follows:

"[The Provider] has not resolved the complaint within the required number of days under the CPC. They have kicked this out to the end of the year again. They are an appalling bank known for mistreating customers. Their record on tracker mortgages speaks to this. I am unwilling to let them away with discriminating against business owners and stopping them from being able to do, with relative ease, what the staff that work for me can do. I am at a loss for the professional fees we have paid out but I am also at a loss for the time & effort.

They wasted my time and also humiliated me by denying us access to finance. They dragged the process out and sought utterly unreasonable levels of evidence. In my view, they acted in bad faith at all stages. The branch manager in [Branch A] in particular was a disgrace. The complaints unit in [the Provider] is also a disgrace and has failed to close a straightforward complaint within the CPC deadlines."

In a submission dated **11 March 2019**, the First Complainant states, as follows:

"I am not happy with the bank's [Final Response Letter]. They did ask for more material than I deem reasonable. In this regard, I believe a significantly higher bar was being set for me as a company director.

Notwithstanding the fact I had tendered costs for the small construction project we had planned and a valuation report that placed the current LTV at c. 50%, we were asked for significant levels of extra proofs for a difference of approximately €250 per month which we could / can easily afford.

I also note the length of time to close this dispute. This bank has a lengthy record of treating customers disgracefully, even by the standards of Irish banks. They were simply dragging this out to try and get me to drop this. They breached GDPR and contacted a third party about my information without any prior consent by me. At no stage did I consent to [the Provider] contacting my accountant about my personal financial affairs. The nature of the inquiry went beyond a simple inquiry into our accounts. My accountant was asked to give assurance over our books. Our company is less than €2m in turnover and this is exempt from audit as a result. I would not ask nor expect an accountant to do this and had already been clear on this point.

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Our PHD as an asset from LTV credit that could have been used for additional lending by [the Provider]. I do not accept that this treated this (sic) a straight forward mortgage move and renovation application.

Of all these issues, I think clear discrimination against me because I am an entrepreneur building a company and creating employment is the main issue. I now have six staff and am investing in my business. I pay myself a de minimis salary because I am growing my companies and continuously investing in them. I have loans outstanding to me from my company in excess of €100,000. The company turnover this year will be close to €400,000 based on its current trajectory. We hope to hit over €1m in sales in the next three years. All of this was clear to the bank.

A second major issue is the matter of the improper use of my personal data.

The paltry compensation is not the issue here. I am not interested in monetary compensation. I am interested in regulatory sanction and consequences.”

The Provider's Case

The Provider advises that in line with its record management policy, where a loan application does not proceed to assessment and drawdown, documentation in relation to the application is not retained after one audited year. However, in order to address this complaint and provide a full and comprehensive response, the Provider says that following significant effort on the part of its Technology Department, it has successfully retrieved a back up copy of the loan application included with an email sent to Branch A in **July 2018**.

The Provider says that applications were set up on its system on **22 and 24 April 2018**. The Provider says it retrieved an undated and unsigned Application for Credit in the sum of €210,000.00, not €220,000.00 as referred to by the Complainants. The Provider says it has also located a letter of sustainability issued on **24 August 2018** to the Complainants for a loan in the amount of €210,000.00.

On **22 July 2018**, the Provider says it received an email from the financial advisor acting on behalf of the Complainants with a scanned copy of a mortgage application in the joint names of the Complainants dated **18 July 2018**. The Provider says the application was for a mortgage loan in the amount of €210,000.00 over a term of 17 years. The Provider says the application was for a redemption of an existing mortgage with another financial services provider (€170,000.00) and to undertake renovations in the amount of €40,000.00. The Provider says Branch A issued a Statement of Suitability on **24 August 2018**.

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The Provider says the Branch A manager has advised that the Complainants' business was introduced by a financial advisor. The Provider says the loan application was processed through Branch A and during the application process there were various email communication between Branch A, the financial advisor and the First Complainant in relation to the application.

The Provider says the Complainants completed their application for credit on **18 July 2018** which was forwarded to Branch A by the financial advisor on **22 July 2018**. On **18 July 2018**, the Provider says Branch A emailed the financial advisor outlining the documentation required and a follow up email in relation to the required supporting documentation was sent to the financial advisor on **14 August 2018**.

The Provider says it made a loan calculator available on its website for potential applicants to ascertain the approximate repayments of their loan. On the website, the Provider says it also provided FAQs and support information for first time buyers and switchers, and an appointment tool to direct customers to branch. Also available to mortgage applicants, the Provider says, was a Mortgage Guide brochure which advised all applicants of the documentation required with an application for credit. The Provider says while it may outline the documentation required to support a loan application at the outset, there are occasions when an applicant submits documentation that may raise further queries that need to be addressed before the application can proceed. In **2018**, the Provider says it did not have the facility for an online mortgage application on any of its online channels.

Referring to page 4 of the Mortgage Guide, the Provider says it would require the following documentation:

Proof of Address/Photo ID

- Valid passport or driving licence
- Utility bill in your name issued within the last six months

If you are a PAYE employee

- Three months up to date current account statements, if your account is not with the Provider
- Completed salary certificate for each applicant
- Two of your three most recent payslips and your current P60

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If you are self-employed you will also need

- Two years up to date audited or certified accounts
- Confirmation that your tax affairs are in order
- Three months up to date current account statements, if the account is not with the Provider
- Three months recent bank statements from your main business current account

As the Complainants were directors of their company, the Provider says, when assessing the loan application, it would require the following:

Basis Income Proofs

- Audited/Certified accounts (covering a minimum of two years' trading and no more than 18 months old)
- Written confirmation from their accountant that their tax affairs were up to date and in order.
- Confirmation of their annual capital and interest financial commitments (accountant's letter or bank statements showing business loan repayments)
- Self-certified accounts may be acceptable where accompanied by:
 - (i) a balance statement from Revenue which confirms the Net Profit Before Tax recorded on the accounts; and
 - (ii) evidence that the taxes have been paid.

The Provider says all assessments would be completed at the Underwriter's discretion and take into account the financial strength of the business and sustainability of profits and cash flow. Where a borrower is a company director, the Provider says the following process is applied:

- To assess the income of a company director (minimum 15% shareholding in the company), the average of the last two years directors' remuneration (based on their %) for the borrower(s) is to be used, subject to the average not exceeding the most recent year's figure.
- In cases where the borrower is a 50% (or higher) shareholder of the company, the borrower's income may be based on the two year average (subject to the average not exceeding the most recent year's figure) of the following calculation relative to their percentage shareholding in the company:

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= Net Profit Before Tax
+ Directors Remuneration
+ Depreciation

- Annual capital & interest financial commitments

And

Income derived from the repayment of directors' loans in the company on the basis this income source is clearly sustainable for the term of the mortgage loan.

In an email sent by Branch A to the financial advisor on **18 July 2018**, the Provider says Branch A requested the following:

- 6 months up to date bank statements
- Salary certificates (attached) to be completed by employers*
- Last two payslip plus P60 each
- Mortgage statement
- Estimate for home improvements

*The branch appears to have referred to the directors as employees drawing a salary from the company.

The Provider says a further email was sent as a follow up to the financial advisor for the information with an additional request for:

- The original application form (original signatures needed)
- ID for both parties

The Provider says in an email dated **27 August 2018** to the Complainants' accountant, the manager of Branch A requested confirmation of the First Complainant's director remuneration for **2016** and **2017**. The Provider says Branch A confirmed it had P60s for both years and required confirmation that directors' remuneration for these periods was the same.

In an email to Branch A on **27 August 2018**, the Provider says the First Complainant provided further information in response to a question raised by Branch A concerning childcare costs and children's allowance received.

The Provider says it would not agree that there was a breakdown in communication which resulted in a delay in the loan application process from the Provider's side. The Provider says it received the application for credit on **22 July 2018** by email from the financial advisor with the understanding that the original signed application was to follow. The Provider also refers to the email sent to the financial advisor on **18 July 2018** outlining the required documentation.

On **14 August 2018**, the Provider says a further email was sent by Branch A to the financial advisor again detailing the documentation required which also referred to the need for the original signed application. The Provider refers to emails dated **27** and **28 August 2018** between Branch A, the First Complainant and the Complainants' accountant seeking further information in relation to the company accounts/remuneration of the directors including the First Complainant. In order to progress the loan application, the Provider says Branch A required this information.

As with any application for lending facilities, the Provider says while the applicant may be required to submit supporting documentation, this documentation in turn may raise further queries that require addressing such as in this case. In an email of **28 August 2018**, the Provider says the branch manager informed the First Complainant that the application was ready to submit to Central Credit for decision but there was one final issue to be addressed: *"In 2016 the company reported a loss of €63,286."* The Provider says Branch A requested some information in relation to this reported loss and also six months up to date business accounts *"to support your application ..."*. In the First Complainant's email on **28 August 2018**, the Provider says the First Complainant informed the Provider that he was no longer progressing the loan application. The Provider says the First Complainant provided some company background but did not address the query raised by Branch A. The Provider says it endeavours to process each application in a timely manner but on occasion delay may ensue due to further information or documentation that may not be apparent from the outset.

In terms of the loan to value ratio in respect of the loan application, the Provider says in the signed loan application dated **18 July 2018** for €210,000.00, there was an outstanding mortgage loan of €170,000.00 and the property was valued at between €330,000.00 and €350,000.00. Based on these figures, the Provider says the loan to value ratio was either 64% or 60% respectively. The Provider refers to the Statement of Suitability issued on **24 August 2018** and says that the rate proposed was a three year fixed new business home loan (<=60% LTV).

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Based on the information available from emails dated **18 July** and **27 August 2018**, the Provider says it would appear that the first reference to the Complainants being under pressure from the builder was the email of **27 August 2018**. While it cannot comment on any communication or conversations that may have taken place outside of the emails available at this time, the Provider says the First Complainant emailed Branch A on **27 August 2018**, as follows:

“We have a week to confirm we are proceeding at best before we lose our builder to a new house until spring. We’ll cancel any application if we miss this window.”

The Provider says the First Complainant references that this was the first time he had spoken to the branch manager and it had been made clear to him that the branch were following procedures in relation to further information requested.

The Provider says the branch manager responded to the First Complainant on **28 August 2018** informing him that Branch A was almost ready to submit the application to Central Credit for decision but needed to address one issue before final submission. The Provider says Branch A needed some information in relation to the company, how long it had been established and if **2017** was the first year of recorded profit. The Provider says Branch A also asked if management accounts for **2018** were available. The Provider says the First Complainant responded on **28 August 2018** advising that he no longer wished to proceed with the loan application.

As advised in the above email, the Provider says the First Complainant had a week to confirm with the builder that he was proceeding but later withdrew his application with the Provider on **28 August 2018**. Without providing the additional information and withdrawing the loan application, the Provider says Branch A did not have the opportunity to try and prioritise the loan for assessment with Central Credit.

The Provider says that as Branch A had received an instruction that the application was not going forward, no further action was taken in relation to the matter.

The Provider says it rejects the First Complainant’s position that the Provider wasted his time and humiliated him by denying the Complainants access to finance. The Provider says Branch A liaised with the First Complainant, the financial advisor and the accountant to process the loan application since the signed application for credit was received on **22 July 2018**. The Provider says it is not in a position to comment on any conversations/queries in relation to obtaining a mortgage loan from the Provider prior to the application submitted on **22 July 2018**. The Provider says it liaised with the manager of Branch A where the application was processed, who has advised that he does not recall any delay in the processing of the application and that the queries raised were quite standard queries.

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In his email of **27 August 2018**, the Provider says the First Complainant seems to have understood that, as with all loan applications, the Provider must adhere to its credit policy. The Provider refers to this email where the First Complainant states:

“... even if this is the first time we have spoken and you were entirely professional speaking with me and clear that you are following procedures.”

On **28 August 2018**, the Provider says the branch manager emailed the First Complainant advising that the application was almost ready for submission to Central Credit for assessment once an issue in relation to the company accounts for **2016** had been addressed. The Provider says Branch A was endeavouring to ensure all the necessary information was included with the application to send to Central Credit for approval.

The Provider says it has no record of any evidence being submitted outlining any losses incurred for professional fees for services provided. The Provider refers to an email from the First Complainant dated **27 August 2018** in which it is stated that costs for the renovation may be changed and *“also allowing for some contingency and professional fees (€1,500) to oversee the rest of the work.”* The Provider says this email included a copy of the drawings for the renovations but did not include an invoice for the professional fees.

In respect of Provision 4.4 of the **Consumer Protection Code 2012** (as amended) (“the Code”), the Provider says the loan application was not declined but did not proceed to approval stage. The Provider says the financial advisor was included on the email dated **28 August 2018** where the First Complainant advised that he was not proceeding with the loan application.

As part of the complaint process, the Provider says the branch manager would have liaised with the case handler in relation to the issues raised by the First Complainant. The Provider says the branch manager confirmed that all the information requested was necessary to process the loan application and that the application was handled within the confines of the Provider’s Credit Policy of the day. The Provider also refers to a statement of the manager of Branch A dated **14 May 2021**.

The Provider refers again to the following passage contained in an email from the First Complainant dated **27 August 2018**:

“... even if this is the first time we have spoken and you were entirely professional speaking with me and clear that you are following procedures.”

The Provider says while the First Complainant was unhappy with the level of documentation or information requested by Branch A, he was satisfied the branch manager had dealt with him in a professional manner. The Provider says it is satisfied that only the required and necessary documentation was requested to process the loan application.

The Provider says it acknowledges that the final response to the complaint raised by the First Complainant on **29 August 2018** was not issued until **6 March 2019**. The Provider says it regrets that for a period of time including **August 2018 to March 2019**, it was experiencing a high volume of complaints which greatly impacted its response times to customers. Consequently, the Provider says the First Complainant was not issued with a Final Response Letter within the 40 day period as outlined in Provision 10.9(d) of the Code.

In this respect, the Provider says Branch A registered a complaint on behalf of the Complainants on **29 August 2018** which was referred to the Customer Resolution Centre for investigation the same day. Due to the very high volume of cases and the resulting backlog, the Provider says the Customer Resolution Centre did not contact Branch A for its report in relation to the complaint until **25 February 2019**. The Provider says Branch A responded to the Customer Resolution Centre on **28 February 2019** and the Final Response Letter issued on **6 March 2019**.

The Provider says it issued correspondence within five days confirming the point of contact for the complaint on **4 September 2018**. The Provider says it issued regular correspondence following this initial letter advising that the complaint was still under investigation. The Provider says correspondence issued on the following dates: **24 September, 23 October, 21 November** and **19 December 2018**, and **22 January** and **19 February 2019** (advising that the Provider would be issuing its final response by **20 March 2019**).

The Provider says it is regrettable that it was not in a position to issue the Final Response Letter within the 40 day period. However, the Provider says it adhered to Provision 10.9(e)(i) of the Code whereby it issued the Final Response Letter within five days of concluding its investigation, following receipt of the branch report on **28 February 2019**.

The Complaints for Adjudication

By letter dated **24 April 2020**, this Office wrote to the First Complainant in relation to this complaint. In respect of the First Complainant's position that he was unduly discriminated against because he is a company director, this letter advised that it is not the role of this Office to make determinations on alleged discrimination as this is a matter more appropriately within the jurisdiction of the Workplace Relations Commission. In respect of the Provider's conduct surrounding its handling of the First Complainant's personal data, this letter advised that any complaint relating to breaches of data protection legislation are not matters for this Office and should instead be directed to the Office of the Data Protection Commission.

By letter dated **20 October 2020**, this Office wrote to the First Complainant noting that he expressed the position that he was not interested in monetary compensation in resolution of this complaint but sought "*regulatory sanction and consequences*". In this respect, this Office advised the First Complainant that regulatory sanction is a matter for the Central Bank of Ireland and, if such sanctions were sought, it may be more appropriate to raise the conduct the subject of this complaint with the Central Bank of Ireland.

It was also noted in this letter that the First Complainant considered that he was denied access to finance by the Provider. In light of this, the First Complainant was advised that this Office will examine the loan application process but it would not interfere with any commercial decision taken by the Provider regarding the loan application. Rather, this Office would investigate a complaint as to whether the Provider, in handling the loan application, correctly adhered to its obligations pursuant to the ***Consumer Protection Code 2012*** (as amended).

Accordingly, the complaints that formed the basis of this investigation and adjudication are that the Provider:

poorly administered the Complainants' mortgage loan application; and failed to resolve the Complainants' complaint within the timeframe prescribed by the ***Consumer Protection Code 2012*** (as amended) and provided a poor level of customer service.

Decision

During the investigation of this complaint by this Office, the Provider was requested to supply its written response to the complaint and to supply all relevant documents and information. The Provider responded in writing to the complaint and supplied a number of items in evidence. The 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.

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

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

Background

By email dated **18 July 2018**, the Provider's Territory Manager at Branch A emailed the Financial Adviser in respect of a mortgage loan application regarding the First Complainant, setting out the required documentation, as follows:

"Paper based mortgage application form attached for [the First Complainant].

- *6 months up-to-date bank statements each*
- *Salary Certs (attached) to be completed by employers*
- *Last 2 payslips + P60 each*
- *Mortgage Statement*
- *Estimate for Home Improvements*

Any queries, give me a bell."

The First Complainant sent certain documentation to the Financial Adviser by email on **19 July 2018**, stating, as follows:

"Please see attached. Hard copies to follow by post. [The Second Complainant] will get her cert stamped & signed etc. today before I put in post."

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It appears that a signed copy of the Complainants' loan application form was attached to this email.

The First Complainant's email was forwarded to the Territory Manager by the Financial Adviser on **22 July 2018**. In his email, the Financial Adviser requested that the Territory Manager telephone him to arrange a meeting the coming Monday or Tuesday.

On **24 July 2018**, the Financial Adviser forwarded an email dated **7 July 2018** from the First Complainant to the Financial Adviser to 'AM'. However, it is not clear whether AM was an agent of the Financial Adviser or the Provider. On **31 July 2018**, AM forwarded the email to the Territory Manager. The First Complainant's email of **7 July 2018**, states, as follows:

"Please see attached. The rest ([the Second Complainant's]) will follow by post.

I am awaiting [a Provider] current account. A browser issue meant I couldn't download the statements but I can forward next week.

I don't have any savings accounts now that [financial services provider] have left Ireland. I am building a portfolio in [another financial services provider] as an education fund for my kids. [...]

Credit card balance is zero – May statement is most recent now I'll provide June once available but it is also zero.

I have no loans for business or personally. I sold my stake in a house at the end of last year and have no personal loans. I am owed over 90k by the business which I expect it will start paying back in the next 12-18 months. As it pays back I'd expect to re-invest the money anyway whether it is into another venture or further developing [business name]. Our focus will be shifting quite heavily to the new business in the latter part of this year.

My last four payslips are provided. Please note, I have paid tax on two of these months and now drawn down salary I have invested it in company development activity instead which helped us get onto two large national procurement frameworks (I have to pay a bid consultant to assist with this process). My salary has accrued in my loan account.

My main current account is with [financial services provider]."

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By emailed dated **14 August 2018**, the Territory Manager emailed the Financial Adviser, as follows:

“Following up on [the First Complainant’s] mortgage application, the following is a checklist of documentation required to complete the application:

- *Original Salary Certs (ensure [the Second Complainant’s] Salary Cert is Stamped)*
- *2 most recent payslips + P60 each*
- *Two Years Certified Financial Accounts for [Company] (accounts you sent earlier are only Abridged Accounts only)*
- *Confirmation*
- *6 Months Up-To-Date Bank Statements each*
- *Mortgage Statement*
- *Can you sent (sic) me the original application form (need the original signatures)*
- *ID for both parties.*

Give me a bell and we can chat this through.”

At ‘Schedule of Evidence 10’, the Provider has provided a screenshot, it says, *“noting the date the application was inputted on the Bank system.”* This screenshot shows entries being created on **22 and 24 August 2018**.

The Provider wrote to the Complainants by letter dated **24 August 2018** outlining details, and the suitability, of their proposed mortgage loan.

By email dated **27 August 2018**, the Territory Manager wrote to the First Complainant’s company accountants (“the Accountants”) in respect of an earlier telephone conversation, as follows:

“I’m just looking to confirm [the First Complainant’s] Directors Remuneration for 2017 & 2016. I have P60s for both years @ €24,800 and just need to confirm that Directors Remuneration for these periods is the same.”

The Accountants responded on **28 August 2018**, advising that the First Complainant’s salary from his company was €24,800.00 for the years ending **31 December 2016** and **31 December 2017**. In response to this (on the same day), the Territory Manager requested the following information:

“Can you confirm the total for Directors Remuneration for 2017 & 2016. We have a particular way of calculating income and this is based on the total directors remuneration.

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Also, can you confirm that all tax affairs, both company & personal (for [the First Complainant]) are up-to-date and there are no revenue agreements in place.”

Responding the same day, the Accountants provided a total figure of €49,600.00 in respect of directors remuneration for **2016** and **2017**, confirmed that the company’s tax affairs were up-to-date and that the First Complainant’s personal tax affairs were up-to-date. The Territory Manager then sought clarification as to whether the figure of €49,600.00 represented the amount of directors’ remuneration for each year, totalling €99,200.00 for both years. The Accountants later confirmed this as being ‘correct’.

By email dated **27 August 2018**, the First Complainant emailed the Territory Manager following an earlier telephone conversation, as follows:

“As discussed on the phone just now, total quoted for these works is €26k but it doesn’t cover all costs. In some cases, we may change the option quoted for and we are also allowing for some contingency and professional fees (1,500) to oversee the rest of the work.

This brings the total works for this to 30k. The other costs are based on estimates but I would have to do considerable work not yet raised with me to get quotes for all this. We are looking to do one release and re-mortgage to finish the house. We can happily live in the house as things stand so if many more obstacles are put in our way, given the quality of our credit record and our securing asset, we will reconsider the application.

[...]

We have a week to confirm we are proceeding at best before we lose our builder to a new house until spring. We’ll cancel any application if we miss this window.

In answer to your final questions. We get €420 per month as we’ve twins in children’s allowance. Our monthly childcare costs are €800 for a childminder – both children are covered by ECCE in full as our crèche is a childcare facility.

We are not suppliants and while these may be standard questions on your part, I have reached the end of my patience even if this is the first time we have spoken and you were entirely professional speaking with me and clear that you are following procedure. I am sure you can understand my position on this also.”

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It appears that an email from the Complainants' architect dated **29 May 2018** attaching tender drawings in respect of the design and layout of the Complainants' planned renovations was attached to the above email.

The Territory Manager responded to the First Complainant on **28 August 2018**, with the Financial Adviser also copied on the email, as follows:

"I am more or less ready to submit your application to Central Credit for decision, however, I do wish to address one issue before final submission.

In 2016 the company reported a loss of €63,286 – can you provide some commentary around this; how long has the company been trading / is 2017 first year of recorded profit / are management accounts available for 2018. We will also require 6 months up-to-date business accounts to support your application (e-mail copies are fine)".

The First Complainant responded that same day, as follows:

"I think this is the end of the road here. I am not going forward with this.

Suffice to say I am extremely annoyed at what I consider frankly pointless questions. Separately, I will be raising a complaint with the Office of the Data Protection Commissioner over you contacting my accountant without my permission on two separate occasions in relation to work he manifestly had no role in preparing. I also relayed this precise message to my agent on this transaction, [the Financial Adviser]. At no stage did I consent to this. I also wish to register a formal complaint with [the Provider] on the handling of my personal data.

While it is now academic, we accrued salary for a year and the balance was T&E building the business over its first year and a bit. We are also building a sister company which is a tech company that was offered a place in the National Digital Research Centre earlier this year as a high Potential Start Up. Our business is up 60% on last year. We invest in this company from company cashflows and our own cash reserves.

This entire engagement is only going in one direction and I believe there is more than enough information for an application. There will only be further pointless questions that are all to do with a zombie bank managing its risk when you will write over €2.5m of debt against our securing asset. It's your loss. I'll do this myself instead."

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The Provider's Customer Resolution Centre telephoned the First Complainant on **30 August 2018** to clarify each aspect of the complaint. During this conversation, the First Complainant stated that he was unhappy with the information that was requested and that contact was made with the Accountants on two separate occasions. In particular, the First Complainant remarked that *"a lot of what was requested was superfluous"*.

By letter dated **4 September 2018**, the Provider wrote to the First Complainant acknowledging his complaint. By letter dated **25 September 2018**, the Provider wrote to the First Complainant to advise that it was still investigating the complaint and would be in contact as soon as the investigations were complete. The Provider wrote to the First Complainant in respect of the complaint again on **23 October, 21 November and 19 December 2018** and **22 January and 19 February 2019**. These letters were in essentially identical terms, and advised the First Complainant that the complaint was still being investigated and that the Provider hoped to be in a position to issue a response by a specified date (generally within one month of the date of each letter). These letters also contained contact details for this Office.

The Provider issued a Final Response Letter dated **6 March 2019**. In this letter, the Provider apologised for the delay in responding, attributing this to an unprecedentedly high volume of complaints.

The Territory Manager

By email dated **14 May 2021**, the Territory Manager provided his recollection of events, as follows:

"Regarding my own recollection of the engagement. The business was introduced by [the Financial Advisor]. Standard engagement procedures followed, I assessed the information presented and made a number of standard enquiries (all in an attempt to secure the most favourable outcome for the applicant)

As I recall, the applicant was Self Employed and was carrying out some renovations to his home - a slightly complex case but nothing out of the ordinary for myself as I handle a number of complex applications.

As I recall I had a number of complex queries regarding applicants Financial Accounts that had been provided, as is often the case the person best positioned to answer queries on Financial Accounts is the accountant, therefore I emailed the accountant with whatever queries I had. This was all done in the interest of getting the deal done and getting it presented to Credit in the most thorough manner.

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As far as I recall there was no delay in the processing of this application, queries raised were quite standard queries and the mortgage journey was on a standard path.

This is the extent of my recollection on this matter. [...].”

Analysis

The Complainants are dissatisfied with the information sought by the Provider in respect of their mortgage loan application. In this respect, I note that the Provider has furnished a copy of its ‘Your Mortgage Guide’ (Rev (05/18)) (“the Mortgage Guide”). At page 14, the Mortgage Guide sets out the information required to complete a mortgage loan application, as follows:

“Keep the following handy:

Proof of Address / Photo ID

- *Valid passport or driving licence*
- *Utility bill in your name issued within the last six months*

If you are a PAYE employee:

- *Three months’ up-to-date current account statements, if your account is not with [the Provider]*
- *Completed salary certificate for each applicant*
- *Two of your three most recent payslips and your current P60*

If you are self-employed you will also need:

- *Two years’ up-to-date audited or certified accounts*
- *Confirmation that your tax affairs are in order*
- *Three months’ up-to-date current account statements, if the account is not with [the Provider]*

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- *Three months' recent bank statements from your main business current account"*

In the Territory Manager's email to the Financial Adviser on **18 July 2018**, the Territory Manager set out the information that was required to support the Complainants' loan application. At this juncture, I note the information requested in this email is broadly in line with what is contained in the Mortgage Guide.

It appears from the evidence that the Territory Manager received a completed loan application form and certain supporting documentation around **31 July 2018**. The Territory Manager sent a further email to the Financial Adviser on **14 August 2018** regarding the information required to complete the loan application. On considering the documentation sought in this email, it appears that certain of the documentation requested on **18 July 2018** remained outstanding. While this email repeated most of the documentation listed in the **18 July 2018** email, I note that certain additional documentation was also requested – certified financial accounts and identification for the Complainants. Although this additional documentation is referenced in the Mortgage Guide, it is not clear why it was not requested as part the email of **18 July 2018**.

Based on the available evidence, I am of the view that the Territory Manger should have set out a complete list of the required documentation in the email of **18 July 2018**. That said, I am not satisfied that the additional information sought in the email of **14 August 2018** necessarily means that the Provider poorly administered the Complainants' loan application. In respect of the request for certified financial accounts, I note that the Territory Manager makes reference to previously furnished accounts a being 'Abridged Accounts'. Therefore, I accept that it was reasonable for the Territory Manager to seek more complete/certified financial accounts.

It appears from the Territory Manager's reference to P60s in his email to the Accountants on **27 August 2018** that further documentation was received between **14 August** and **27 August 2018**.

The Territory Manager telephoned and emailed the Accountants around **27 August 2018** to obtain certain information regarding the First Complainants director's remuneration from his company. The Territory Manager sought further clarification in respect of the First Complainant's directors remuneration, company tax affairs and personal tax affairs from the Accountant on **28 August 2018**.

In the Final Response Letter, the Provider explained that due to an administrative error, the Territory Manager contacted the Accountants without receiving consent from the First Complainant. I do not propose to consider the Territory Manager's conduct in so far as concerns data protection matters.

In terms of the information sought from the Accountants, it can be seen from the emails exchanged between the parties that the Territory Manager was attempting to clarify certain matters regarding the First Complainant's income and tax affairs. While I do not propose to comment on the means by which the Territory Manager sought to obtain this information, I am satisfied that the clarification/information the Territory Manager was seeking to obtain in this instance was reasonable and indeed necessary.

It appears that a telephone conversation took place between the First Complainant and the Territory Manager on **27 August 2018**. The First Complainant's email on **27 August 2018** appears to have followed this telephone conversation. From this email, it appears that the parties discussed the renovations the Complainants intended to carry out on their home, the amounts received in respect of child benefit payments and childcare costs.

In light of fact that the Complainants' supporting documentation seems to have been submitted between **31 July 2018** and **27 August 2018**, having regard to the discussions which appear to have taken place on **27 August 2018** and the information sought (together with the timing of these discussions relative to when the supporting documentation was submitted), I accept that it was reasonable for the Territory Manager to seek to discuss or request details regarding the renovations, child benefits payments and childcare costs.

In the Territory Manager's email of **28 August 2018**, further details were sought in respect of the First Complainant's company and up-to-date business accounts were also sought. However, it appears from the evidence that only abridged accounts had been furnished in respect of the First Complainant's company. While the Territory Manager appears to have had financial information in respect of the First Complainant and his company relating to **2016** and **2017**, he does not appear to have been furnished with any financial information relating to **2018**. However, the request for information was made towards the end of **August 2018**. Therefore, I believe that it was not unreasonable to seek more up-to-date company related financial information. Further to this, it appears that the Territory Manager had limited information in respect of the First Complainant's company. In these circumstances, I believe it was reasonable and necessary for the Territory Manager to enquire into the loss recorded by the company in **2016** or the company's performance since then.

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Accordingly, having considered the evidence and the parties' submissions overall, the evidence does not support the assertion that the Provider poorly administered the Complainants' mortgage loan application.

In their Complaint Form, the Complainants state that *"The branch manager in [Branch A] in particular was a disgrace."* This is quite a serious statement. I have been furnished with no evidence that the Territory Manager behaved in an unfair or unreasonable manner, or in such a way that would suggest his behaviour was a 'disgrace'.

The First Complainant raised a formal complaint as part of his email on **28 August 2018**. Following this, one of the Provider's agents contacted the First Complainant by telephone on **30 August 2018** to clarify the complaint being made. By letter dated **4 September 2018**, the Provider wrote to the First Complainant acknowledging the complaint. This was followed by a number of further letters advising the First Complainant that the investigation into the complaint was ongoing. A Final Response Letter issued on **6 March 2019**.

However, prior to the Final Response Letter issuing, this Office wrote to the Provider on **29 January 2019** requesting that the Provider issue a Final Response Letter within 15 working days. Disappointingly, this letter was not responded to by the Provider and neither was a Final Response Letter issued. This Office wrote to the Provider again on **26 February 2019**, noting both the absence of a response to previous correspondence and the absence of a Final Response Letter. By email dated **5 March 2019**, the Provider advised this Office that a Final Response Letter would issue before the end of the week.

In terms of the length of time taken to issue a Final Response Letter, I note that provision 2.8 of the Code states that the Provider must ensure that it *"handles complaints speedily, efficiently and fairly"*. Further to this, provision 10.9(d) states that the Provider *"must attempt to investigate and resolve a complaint within 40 business days of having received the complaint"*.

Accordingly, I accept that the complaint was promptly acknowledged and that regular correspondence issued to the First Complainant regarding his complaint. However, although the Provider may have been experiencing a high volume of complaints, it is my opinion that the Provider unreasonably delayed in issuing the Final Response Letter.

Goodwill Gesture

In its Complaint Response, the Provider says that:

“On further review of the complaint and the time involved in issuing our Final Response to the complaint received on 29 August 2018, the Bank would like to offer €1000.00 in light of our short comings in service provided to the Complainants.”

In light of the above analysis, I consider this goodwill gesture to be a reasonable sum of compensation for the customer service failings on the part of the Provider. In these circumstances, on the basis that this offer remains available to the Complainants, I do not uphold this complaint.

Conclusion

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

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



**GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

20 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,

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and

(b) ensures compliance with the Data Protection Regulation and the Data Protection Act 2018.

