



<u>Decision Ref:</u>	2021-0553
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Commercial Mortgage
<u>Conduct(s) complained of:</u>	Failure to process instructions in a timely manner Delayed or inadequate communication Dissatisfaction with customer service Maladministration
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

This complaint relates to mortgage loan application in late 2019.

The Complainant's Case

The Complainant states that he is a long time customer of the Provider for over 23 years. He explains that a house with 24 acres of land came on the market, three miles from where he is living with his parents. He viewed this as an opportunity to start off his own farming business and have his own house.

The Complainant states that he telephoned the Provider on **16 September 2019** and explained that he was seeking a loan to purchase the property at public auction. The Complainant states he indicated the urgency of his request because the property was due to be auctioned on **15 October 2019**.

The Complainant states that he attended at the Provider's branch on **18 September 2019** and met with a residential mortgage adviser. He said he brought a considerable number of documents with him, including tax documents from the previous few years, identification, utility bills and other documentation. The Complainant states that at this meeting the mortgage adviser provided him with details of what additional information was needed in order to proceed with the application.

The Complainant states that he sent the remaining documents to the Provider by email on **20 September 2019**. The Complainant says that the mortgage adviser informed him that he would need to supply a "gift letter" as part of his application. The Complainant states that this was despite the fact that he had informed the mortgage adviser that he had "*considerable Department of Agriculture monies coming*" and monies from livestock that would be sold.

The Complainant states that he was told that he would need the actual gift deposited in his bank account prior to his application being sent off. The Complainant did not want to do this and questioned this approach. The Complainant believed that the mortgage adviser was forcing him to ask family members for money that he knew he did not need and which might expose him to capital acquisitions tax.

The Complainant states that he sent additional documentation to the Provider on **24 September 2019** showing a salary certificate with a pay rise, which the mortgage adviser would not take into account. The Complainant asserts that the Provider informed him that he was only entitled to a mortgage amount of **€74,000** based on the information in the Provider's system in light of the Complainant's income levels.

The Complainant states that this was wrong and he escalated the issue with the Provider. He asserts the Provider then acknowledged that he was eligible for a higher mortgage amount of **€117,000** as the mortgage adviser had failed to take into account how the farm would be supporting the commercial loan. The Complainant alleges that the mortgage adviser did not have the requisite level of competence to advise him, and to deal with this situation in a timely manner, and prior to the auction date of 15 October 2019.

The Complainant states that on **4 October 2019**, he was advised that the Provider's underwriters had sent through additional comments. The Complainant states that he questioned why progress had been slow and he was informed that the mortgage adviser had been out sick. The Complainant stated that it appeared that nobody in the Provider had been progressing his case which had to be dealt with very urgently. The Complainant states that the underwriters sought a letter from the Complainant's accountant, but the Complainant stated that he had to explain, not for the first time, that he did his own accounts.

The Complainant states that he filed his 2018 revenue returns on the weekend of Friday 5 October 2019 and sent the Form 11 assessment document as well as receipt of payment of taxes to the mortgage adviser. The Complainant states that he received a phone call from the mortgage adviser on Monday 8 October 2019 informing the Complainant that the underwriting team needed the Complainant's Chapter 4 tax document along with other documents.

The Complainant states that the mortgage adviser informed him that she would need all of these documents and then a further 5 day turnaround, to process them. The Complainant states that this left him with very little time to get everything in order prior to the auction.

The Complainant states that on **14 October 2019**, the day before the auction, he received a call from the Provider seeking further information. The Complainant states that it was clear to him at this point, that he would not have loan approval from the Provider prior to the auction date. The Complainant states that when he complained to the Provider as to how his application had been treated, he was told that this did not stop him from bidding at the auction and the Complainant describes this as an absurd remark. The Complainant sets out that it would have had very adverse consequences for him, financially and socially, if he had bid on the auction, without having finance in place.

The Complainant states that mortgage approval came through on **18 October 2019** which was too late to allow him to try to acquire the property at auction. The Complainant believes that the mortgage advisor did everything possible *“to ensure I missed her deadlines”*. He believes in that regard that he was *“hung out to dry”* by the Provider, with all his dreams and hopes shattered by the Provider’s actions.

The Provider's Case

the Provider denies any wrongdoing. The Provider states that from the outset of the application process, the Complainant was provided with a mortgage application checklist which set out the documents and information required from potential mortgage borrowers. The Provider states that the full information required in respect of the Complainant’s accounts and tax affairs was only submitted on 9 October 2019 and thereafter, the application was submitted to the Provider’s underwriters for assessment on 10 October 2019.

The Provider states that the underwriters raised further queries and requested further documentation and that it ultimately approved the mortgage on 18 October 2019. The Provider submits that this is a reasonable period in which to have a mortgage application submitted, assessed and approved.

The Provider refutes the allegation that the Provider’s mortgage adviser *“forced”* the Complainant to ask family for funds.

The Provider submits that while there is no onus on it to compensate a Complainant for a loss that did not occur, it notes that it offered the Complainant the sum of €250 in its final response letter of 22 October 2019 and the Provider confirms that this offer remains open for acceptance by the Complainant.

The Complaint for Adjudication

The complaint is that the Provider offered poor customer service in processing the Complainant’s mortgage loan application. The Complainant wants the Provider to resolve the dispute by offering *“financial compensation proportionate to the distress, anxiety and ill-treatment caused, taking into account the consequences.”*

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Decision

During the investigation of this complaint by this Office, the Provider was requested to supply its written response to the complaint and to supply all relevant documents and information. The Provider responded in writing to the complaint and supplied a number of items in evidence. The Complainant was given the opportunity to see the Provider's response and the evidence supplied by the Provider. A full exchange of documentation and evidence took place between the parties.

In arriving at my Legally Binding Decision I have carefully considered the evidence and submissions put forward by the parties to the complaint. Having reviewed and considered the submissions made by the parties to this complaint, I am satisfied that the submissions and evidence furnished did not disclose a conflict of fact such as would require the holding of an Oral Hearing to resolve any such conflict. 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 **29 November 2021**, outlining the preliminary determination of this office in relation to the complaint. The parties were advised on that date, that certain limited submissions could then be made within a period of 15 working days, and in the absence of such submissions from either or both of the parties, within that period, a Legally Binding Decision would be issued to the parties, on the same terms as the Preliminary Decision, in order to conclude the matter. In the absence of additional submissions from the parties, within the period permitted, the final determination of this office is set out below.

This Office has very carefully considered the submissions and documentation furnished by the parties.

The evidence demonstrates that on **17 September 2019**, the Provider acknowledged by email the Complainant's expression of interest in applying for a mortgage. The acknowledgment email attached a mortgage document checklist. In addition, the email expressly stated that the mortgage checklist was a useful guide as to what the Complainant would need to bring to the meeting. The Complainant was also advised that his accounts for **2018** along with Chapter 4 and Form 11 documentation, were required for the mortgage application. In addition, a salary certificate was attached to the email and the Complainant was informed that it would need to be completed by his employer.

The Complainant responded by email on the same day raising a number of queries. Among other things he stated that his 2018 accounts were preliminary and showed an accounting profit of approximately €7,000. He queried whether he should bring these accounts to the Provider, given that they were only preliminary. In addition, he stated that he would be contributing a €75,000 deposit.

In response, I note that the Provider replied back on the same day explaining that the current salary would be used for mortgage calculations and that the Complainant's P60 would be required, to show employment in the previous year.

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The Complainant was advised that preliminary accounts were not what was required, as the Provider needed at least 2 years' sets of accounts in order to be able to use this as income. The Provider explained that with regard to the deposit for the house, this would need to be shown in the Complainant's accounts or savings.

The Provider says that the Complainant needed to demonstrate repayment capacity and therefore the statements detailed in the **checklist** were required to ensure that the Provider had all the required information.

The Complainant responded later that day and stated, among other things, that he had monies on deposit with the Provider and that this along with sheep sales, cattle sales and a further €24,500 due to be received from the Department of Agriculture, would fund the deposit of €75,000.

I note that the Provider responded almost immediately to reaffirm with the Complainant that the monies would need to be lodged to his account, before the application was submitted.

The Complainant then responded a short time later stating that:

"I can fund the money in the immediate term if needs be from my father which when the monies arrive just give them to him. This is the same net position in any case with me putting €75k towards the purchase".

In response to this, the Provider responded a very short time later, attaching a gift letter in the event that the Complainant wished to use money gifted from his father.

I note that further email correspondence continued between the Complainant and the Provider's mortgage adviser on 24 September 2019.

On **6 October 2019**, the Complainant emailed the Provider to state that he had received information that the monies due to him from the Department of Agriculture as a result of winning an appeal, would not now be paid to him, until later in November 2019. He went on to state that he had taken the decision to finalise and file his 2018 accounts and that the Chapter 4 document would be generated and sent by the Revenue. The Complainant undertook to send the Chapter 4 documentation to the Provider, once it was received.

I note that the Complainant asked that the Provider expedite the loan approval status in light of the impending auction day.

On **7 October 2019**, the Provider's mortgage adviser responded to the Complainant confirming that she needed to speak to the underwriters and would revert back to the Complainant. The Provider went on to state that it had been explained to the Complainant what the Provider's process was, and that the Provider needed to have all the required paperwork in hand, prior to sending the application off to the underwriters.

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Later that afternoon, the Provider wrote to the Complainant stating that feedback had been received from the underwriters and because the Complainant was doing his own accounts, the Chapter 4 and Form 11 forms for 2018 would be required. In addition, the Provider explained that a letter from the Complainant (as he was self-assessing) was required setting out the reasons for the loss and return to profit, demonstrated on his accounts.

On Monday **8 October 2019**, the Complainant supplied the Provider with his Chapter 4 document in relation to his 2018 accounts.

The following day, on Tuesday **9 October 2019**, the Complainant emailed the Provider to complain that his application had not been dealt with efficiently or with the requisite urgency.

The Provider responded on Wednesday **10 October 2019** to reiterate that at the outset, it had furnished a checklist and details of what was required for a mortgage application. The Provider confirmed that the response from the underwriters would be communicated to him.

Evidence has been furnished showing a letter from another financial service provider to the Complainant dated **1 October 2019** which is a letter of offer of a term loan of €98,000 repayable over 177 months (approximately 15 years). In addition, a further letter dated **11 October 2019**, from this other financial service provider confirmed that the Complainant had been approved in principle for a mortgage of up to €117,000 repayable over a 35 year period.

The Complainant states that on 14 October 2019, the day before the auction, he was asked for further documentation from the Provider.

The Complainant makes the case that at this point in time, he knew he was not going to get approval from the Provider prior to the auction the following day.

The Provider approved the mortgage application on 18 October 2019, 3 days after the auction date, which was of no benefit to the Complainant. The Complainant asserts that the failure to issue the loan approval in advance of the auction date was as a result of maladministration and poor customer service by the Provider. He submits, in his email to this office on 13 October 2020, that he provided all information as requested "*as soon as it was requested*". He asserts that his case was left idle when the Provider knew it was urgent and that any delays were not in his control. He believes he was treated disgracefully.

At the outset, I note the Complainant's dissatisfaction that the Provider was:

"forcing me to ask family members for money that I know I would not ever need and also expose me to capital acquisitions tax on the gift or gifts"

I do not accept however that there is any evidence to support that suggestion.

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It is clear to me from the emails, as outlined below, that it was the Complainant who proposed that his father might fund part of the deposit monies temporarily, until such time as the Complainant received the monies due to him from the Department of Agriculture. In response, the Provider simply stated that a gift letter would have to be completed in that eventuality. In my opinion, this was a completely reasonable interaction and requirement on the part of the Provider. In the event, I note that it later transpired that the monies from the Department of Agriculture would not be received prior to the auction date in October, because the monies would not be paid until later in November 2019.

In this case, the Complainant initiated his request for a mortgage on 17 September 2019. He received mortgage approval on 18 October 2019. The Provider has certain policies for the approval of loan facilities and requires certain documentation in order to assess an applicant's mortgage application.

I note that the Complainant was advised at the very start of the process on 17 October 2019 of the documents that would be required for his mortgage application. This included, amongst many other things, express advice to the Complainant that the Provider "*will need your accounts for 2018 also along with Chapter 4 and Form 11 for the application*".

I note that the Complainant was not in a position to furnish the 2018 finalised account, Form 11 and Chapter 4 form until Monday 8 October 2019. The application was thereafter, submitted to the Provider's underwriters on Wednesday 10 October 2019 and I note that mortgage approval issued on 18 October 2019, too late for the Complainant's plans to attend the auction.

While the Complainant did not receive mortgage approval from the Provider in time for the auction on 15 October 2019, I am conscious that finance to the tune of **€98,000** from a third party provider appears to have been sought and put in place by 1 October 2019.

I am satisfied therefore that even if the Complainant had wished to pursue additional loan facilities to a maximum of **€117,000**, with the Provider - or indeed with the other financial service provider which I note approved those funds in principle, on 11 October 2019 - this term loan approval confirmed on 1 October 2019, ought to have enabled him to proceed at the auction, had he wished to do so, given indeed the financial assistance which was available to him on a temporary basis from a family member.

While I appreciate that the Complainant wished the Provider to process his mortgage application before the auction date, the evidence before me is that the Provider proceeded to process it with reasonable efficiency once it had received all of the Complainant's outstanding documentation.

In my opinion, any delays or hold-ups, were not as a result of maladministration or poor customer service or unreasonableness on the part of the Provider. The requisite documents were not submitted until **8 October 2018**, although the Complainant had been made aware by the Provider of this specific requirement on **17 September 2019**.

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I note that once received, on 8 October 2019, the Provider's underwriting team carried out an assessment process. This process concluded within a period of 8 to 10 days which, I am satisfied was, a reasonable turnaround.

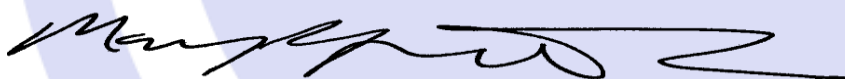
I am satisfied that within the regulatory framework applying to the provision of finance by any regulated financial service provider, it remains a matter for each lender to set its own credit policies and to make its own lending decisions within its commercial discretion, on receipt of applications for mortgages or other credit. I accept on the evidence before me that the Provider processed the above loan application based on its own policies and I am satisfied that it acted reasonably in doing so.

I note that there was an error by the Provider, early in the process, in confirming the maximum funds for which the Complainant would be eligible to apply, though happily, this was resolved quickly. As I have not however made any finding of wrongdoing by the Provider, I do not consider it appropriate to make a direction for redress. I note the offer from the Provider to the Complainant of a goodwill payment of €250 and it will be entirely a matter for the Complainant to communicate directly with the Provider, if he wishes to accept that goodwill gesture.

Conclusion

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

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



MARYROSE MCGOVERN
Deputy Financial Services and Pensions Ombudsman

21 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.