



<b><u>Decision Ref:</u></b>	2022-0032
<b><u>Sector:</u></b>	Banking
<b><u>Product / Service:</u></b>	Personal Loan
<b><u>Conduct(s) complained of:</u></b>	Refusal to grant consumer credit Delayed or inadequate communication Dissatisfaction with customer service
<b><u>Outcome:</u></b>	Rejected

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

The Complainant holds a personal current account with a bank (the “**Provider**”).

#### **The Complainant’s Case**

The Complainant holds a personal current account with the Provider which was opened by the Complainant on **24 March 2006**. The Complainant wrote to the Provider on **29 April 2020** to complain about a visit he had to the Provider’s local branch. The Complainant contends that he enquired about applying for a bank loan of €100.00 (one hundred euros) and says that he informed the Provider that he had funds in an alternative financial institution that could be used as security.

The Complainant argues that the Provider’s staff member abused him verbally and that on the occasion in question they “*ordered [the Complainant] out of the office.*” The Complainant says he also asked about “*overdraft facilities*” and “*was laughed at.*” The Complainant states that he was recovering from spinal surgery at this time and was very distressed at the manner in which he was dealt with and believes that it has risked his health.

By letter dated **29 April 2020**, and addressed to the Provider, the Complainant asserts that:

*"I now wish to raise some important matters. I approached a member of staff in the [Provider]. I realised I was getting nowhere with her. I requested a meeting with the Manager. The lady told me I could not, but for me to go to the cashier, I stated I wanted a loan of a hundred euro. I stated that I had 20000 euro on deposit in the Credit Union and that I was proposing to offer it as security for the loan. Enclosed find copy of receipt from the Credit Union. The cashier did not even ask me to produce it. The cashier ranted and laughed at me, stating I would not get a loan and ordered me out of the office. The cashier thought I was finished and moved in for the kill. The cashier never attempted to check my accounts. I was always warned to beware of the tramp on horseback. I ask how can the [Provider] be trusted, the public have to be warned and advised of the conduct of members of the staff in the [Provider]. I now wish to state that I did several other transactions with another cashier, not the tramp on horseback I met. I also requested overdraft facilities, again I was laughed at. When I retired I opened an account with the [Provider], I dealt with [name], [name] was an old friend of mine and a lady, not a tramp on horseback.*

*I did all my business:*

- 1. My pension from my job as a [job title].*
- 2. Receipt for money in the Credit Union, i.e. of 20000 euro.*

*I wish to state I was recovering from serious spinal surgery. I was seriously confused by the threat of the tramp on horseback. By god did she move in for the kill when she thought I was finished. Roared and shouted and yelled and told me I was getting nothing. Surely the public have to be protected, I also wish to state I have my house insured with [Provider]. As I have already stated I am recovering from the spinal surgery, I had very serious surgery. My medical advisors are worried that I may have long standing health problems as a result of the conduct of the [Provider] staff. I noticed the sign in the front of the [Bank] "we are here to help." I ask the question who they think they are fooling."*

The Complainant advised that for the complaint to be resolved:

*"(1) what price patient care (2) recovering from serious spinal surgery (3) I was seriously confused (4) danger I may have long standing health following."*

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The Complainant states that he tried to get a loan of €100.00 (one hundred euros) at a Provider branch sometime on or before **29 April 2020** and that due to the Provider's staff's conduct towards him, he has cause to complain. The Complainant also contends that he was recovering from spinal surgery and was not in good health at this time.

### **The Provider's Case**

The Provider "*strongly refutes [the Complainant's] allegations*" that any of its staff would behave in an abusive manner. The Provider submits that there is not enough information available to date this complaint or to establish any facts surrounding it. The Provider highlights the lack of medical evidence to support the Complainant's position.

The Provider submits in its **Final Response Letter** dated **14 August 2020** and addressed to the Complainant, as follows:

*"I must advise you that the [Provider] wholly rejects the coarse, inflammatory and offensive language contained in your letter...I wish to clarify that in accordance with [Provider] policy the minimum loan amount we offer is €2000 and we cannot accept security on a personal loan as all lending is on a variable rate and as such is unsecured. The [Provider] does provide personal loans of €100.....I wish to respectfully advise you that [Customer Services Manager in Branch] also strongly refutes your allegations that any of the staff from [location] branch would "rant and lough" (sic) at any customer or order customers out of the office. I affirm that the provider has full confidence in how its staff and management have behaved in attending to your banking needs."*

The Provider further submits as follows:

*"The Provider notes the Complainant's original letter of complaint to the Provider dated 29 April 2020 fails to identify even an approximate date or period in which he alleges that the incident in question occurred. The Provider also notes that the Complainant has failed to identify same in any subsequent documentation either to the Provider or to the FSPO. The Provider in conducting its investigation into this complaint has sought to identify any of the staff members the Complainant allegedly interacted with at any time before 29 April 2020. None of the Provider's staff members (female or male) in the branch identified by the Complainant in the letter of 29 April 2020 have any recollection of discussing a loan request for €100.00 with the Complainant, or of any of the conduct alleged by the Complainant in that letter.*

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*The Provider would respectfully submit that given the extreme nature of the allegations made by the Complainant, such an incident would not be difficult to recall if same took place in the manner described by the Complainant. In summary, the Provider cannot confirm the date of the alleged incident, having made a number of attempts to ascertain this information. The Provider also notes the repeated failure of the Complainant to assist in identifying the date of the alleged incident."*

The Provider further asserts that:

*"the Provider takes grave issue at the tone of the letter of 29 April 2020, as it relates to descriptions of any staff members with whom the Complainant alleges to have interacted with. The Complainant on multiple occasions refers to the cashier in question as a "tramp on horseback." The Provider does not tolerate abusive or aggressive language and behaviour against any of its employees. The Provider would characterise the tone of the Complainant's letter as entirely unreasonably aggressive, which the Provider submits not warranted in any way whatsoever.*

*In a similar vein, the Provider expects and requires all staff members to behave in a respectful manner to all of its customers. If the staff member 'identified' by the Complainant "ranted and laughed" at the Complainant, the Provider would treat these actions very seriously, and appropriate action would have been taken. ... the Provider reiterates that it has found no evidence whatsoever of these events taking place, and is of the view that the Complainant's account does not sufficiently particularise the events such that they could be identified further."*

The Provider highlights the lack of details surrounding the incident and its inability to verify the Complainant's complaint. The Provider submits that there is a lack of medical evidence to verify the Complainant's position. The Provider states that it engages in effective customer service. The Provider notes its discontent with the Complainant's language as used in his letter of complaint to the Provider.

### **The Complaint for Adjudication**

The complaint is that the Provider failed to demonstrate an acceptable level of customer service towards the Complainant.

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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 **25 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. Following the consideration of additional submissions from the parties, the final determination of this office is set out below.

I consider the following section of the Central Bank's **Consumer Protection Code 2012 (as amended)** to be relevant:

*"Where a regulated entity has identified that a personal consumer is a vulnerable consumer, the regulated entity must ensure that the vulnerable consumer is provided with such reasonable arrangements and/or assistance that may be necessary to facilitate him or her in his or her dealings with the regulated entity."*

By email, dated **7 October 2020**, the Customer Services Manager of the Provider's local branch submits that:

*"I spoke with the Staff in the branch in [location] - they are familiar with this customer however not the specific incident that he refers to in his letter. All staff in the branch have stated that over the years any dealings with this customer have been always courteous and professional."*

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The Provider also contends, by email dated **9 November 2020**, that:

*"I have spoken with the Staff in [location] again this morning and they have no record of discussing a loan request for €100 with customer [Complainant]. As per my previous Mail if [Complainant] could provide us with the date of the alleged incident he refers to in his letter it may help us narrow down who was on site and in the cash area on the date in question."*

The Provider further asserts that:

*"the Complainant's account of events as set out in the letter of 29 April 2020 fails to demonstrate any evidence that might assist the Provider in identifying the incident in question. The Complainant has not indicated a date (even approximately), a time of day, or any identifying features of any staff member he allegedly spoke to other than one instance of describing her as "the lady". The Complainant has failed, despite repeated requests by the Provider, to elaborate upon this account of events with any further detail or evidence to corroborate what is said. The Provider, as noted at Response 1 above, has not been able to identify any of its staff members as being the person who allegedly interacted with the Complainant in the manner set out in his letter, or at all. The Provider cannot comment on the Complainant's allegations as at present, there is no evidence to substantiate the Complainant's allegations, other than the vague and undetailed recollection of the Complainant.... "*

I note that the Complainant had submitted a Credit Union printout dated **23 April 2020** showing the amount of **€20,424.28** (twenty thousand four hundred and twenty four euros and twenty eight cent) and a bank account statement from an unknown provider.

The Complainant has not however submitted any supporting evidence of his visit to the Provider's local branch, to identify the date of his visit (for example a receipt, document or lodgment slip). I note that the Complainant holds a personal current account with the Provider. He says that he was denied a loan in the amount of €100.00 (one hundred euros) and I note that he says he has *20,000 euro on deposit in the Credit Union*. It is not clear in those circumstances why the Complainant had cause to seek a loan of €100.00 from the Provider on the occasion in question.

I have considered and I am disappointed by the overall tone of the Complainant's letter to the Provider dated 29 April 2020, and I am satisfied that the Provider was entitled to be dissatisfied with the highly inappropriate language used by the Complainant in this letter, in particular, the derogatory description of a staff member.

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The Complainant, as a customer of the Provider is entitled to be treated with respect. Likewise, the staff members of the Provider are equally entitled to be treated with similar respect by any member of the public entering the branch.

I note that the Provider notes that *“the Complainant's original letter of complaint to the Provider dated 29 April 2020 fails to identify even an approximate date or period in which he alleges that the incident in question occurred”*. I also note that the Provider submits that *“the Complainant's account does not sufficiently particularise the events such that they could be identified further”*.

I am conscious that no times or dates or names were included in the Complainant's letter of complaint dated **29 April 2020**. It is important that the Provider has an opportunity to respond to any complaint made against it and, in the circumstances of this matter, I am satisfied that the evidence available to this Office does not establish the occurrence of a cause of complaint by the Complainant.

The Complainant is a gentleman of advanced years. He has submitted information which illustrates that he was a particularly talented football player, over a very long career. He refers to his previous serious mental health problems which, happily, he says have cleared up. He is very unhappy with the way he was treated when he was visiting the branch of the Provider, as outlined above.

I note that the Complainant asserts, by letter dated **29 April 2020** to the Provider, that

*“I am recovering from the spinal surgery, I had very serious surgery. My medical advisors are worried that I may have long standing health problems as a result of the conduct of the [Provider] staff.”*

I note that the Complainant has submitted a post-surgery advisory leaflet for spinal surgery and he has included medical reports from 2021 and 1995.

The Provider asserts that:

*“The Provider's approach to identifying a vulnerable customer consists of two forms of analysis. First, a vulnerable customer may be identified with reference to the definition of a vulnerable consumer contained within CPC 2012. Second, the Provider may identify a vulnerable customer through a multifactor approach that will take into consideration the context of the customer's position as well as vulnerability 'drivers' that could affect a customer's action in engaging with the Provider.*

*When dealing with a customer who has been identified as having a higher propensity to vulnerability, the Provider will make an assessment of the customer based on a number of factors, such as; whether that customer has the ability to make a decision, whether the customer is aware of consequences of a decision or action, and whether the customer is aware of the processes being used to deal with the customer's account. This assessment is a functional one, and is by its nature entirely subjective based on the dealings between the Provider and the customer at the relevant times.*

*If the Complainant attended the Branch as alleged, and identified himself as having recently had spinal surgery (or clearly demonstrated same without need for identifying) then the Provider would have factored this into a functional assessment of the Complainant as set out above, and taken appropriate action where necessary.*

*Notwithstanding the above, the Provider is not in a position to comment on whether it was/is of the view that the Complainant should be classified as vulnerable. The Provider does not have details of the Complainant's condition, and more importantly, how that condition affects his ability to make a decision or his awareness of consequences and processes being used to deal with his account. The Provider cannot comment on how the Complainant presented to the branch staff when he allegedly attended the branch during the course of the incident in question, as there is not sufficient evidence to identify the incident to which the Complainant refers. The Provider therefore can only give a response in a general sense of how it would typically approach a customer who either has, or potentially has, been identified as vulnerable."*

The Provider submits, by letter dated **13 November 2020** and addressed to the Complainant, that:

*"I understand you remain unhappy in relation to a request you made in [Provider] [location] to borrow €100. You state that you had €20,000 on deposit with the Credit Union and you could offer this as security against the loan of €100. As set out in the Banks letter of 14 August 2020, the Banks policy at the time of your request was that minimum lending was in the amount of €1,000. Your request to borrow €100 did not meet the criteria for an application. In your letter of complaint you use the phrase "Tramp on Horseback" when referring to the staff member who you claim you dealt with on the day. You also state that you were "roared and shouted and yelled" at and that the staff member "told me I was getting nothing".*

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*The [Provider] do not allow the use of such language and name calling towards their staff and we expect all customers and staff to behave with mutual respect to each other. The Bank must admit that we find your letter of complaint extremely aggressive in your wording and we do not feel we can resolve this matter amicably with you.*

*The Branch Manager has spoken to all staff members in the branch who do know you as a customer and have complimented your professional and courteous manner in previously dealings.*

*The staff in the branch do not recall any request made by you to borrow €100. As you have not provided a name of the staff member you claim mis-treated you, or a date in which you claim this incident took place, the [Provider] are unable to investigated this matter further."*

As there is no evidence whatsoever available from the Complainant or from the Provider as to the date upon which the Complainant visited the branch and asked for a loan of €100, it is not possible for the Provider to make details available of the staff who were on duty at the time of this suggested visit by the Complainant to the branch. Neither is it possible for the Provider to know who the Complainant recalls dealing with.

Given that the Complainant says that he was shouted and roared at, one would expect that the staff at the branch would recall a visit of that nature by the Complainant, given the level of discord which he describes but, on this occasion, the staff at the branch have no recollection of any such incident having taken place, and I note the efforts made by the branch manager to establish details of the interaction which has been referred to by the Complainant, and which gives rise to this complaint.

In those circumstances, on the basis of the evidence made available to this Office, I am not satisfied to make any finding of wrongdoing by the Provider, in its dealings with the Complainant. It is regrettable that the Complainant's dissatisfaction has led to the letter of complaint which he sent, containing such derogatory and unacceptable language. I note that he has explained that this was the language of a very sick man, who was recovering from surgery.

I take the view on the basis of the Provider's response, that it has a history of courteous and professional interactions with the Complainant, which are indeed to be encouraged into the future. This will enable the Complainant, whose good name is not in doubt, to access his banking services, in an environment of mutual respect.

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**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

25 January 2022

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.