



<u>Decision Ref:</u>	2022-0038
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Repayment Mortgage
<u>Conduct(s) complained of:</u>	Failure to process instructions in a timely manner Dissatisfaction with customer service
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The complaint concerns the procedures of the Provider in respect of the Complainants' application for a mortgage loan facility.

The Complainants' Case

The Complainants submit that the Provider's procedures were unsatisfactory and caused delay and difficulty to the Complainants in their attempt to secure a mortgage loan agreement with it.

The Complainants assert that they submitted an application to the Provider in **October 2018** seeking mortgage loan approval for a house which they were building. They received Approval In Principle ('AIP') from the Provider on **9th November 2018** for the sum of **€262,500**. Upon their receipt of this approval, the Complainants submit that they provided various required documents to the Provider. This documentation included, but was not limited to, evidence of life insurance cover, the property valuation report, confirmation of the Complainants' funds, a copy of the planning permission documentation, the building costings and details of the building insurance.

The Complainants submit that they understood that upon the Provider's receipt of this documentation, it would issue them with a Letter of Approval for a mortgage, without delay. Instead, it directed them to contact the relevant county council planning authority to request the removal of an enurement clause from the planning permission documentation.

It is the Complainants' position that the Provider misinterpreted the planning permission documentation to believe that an enurement clause had been included on the planning permission documentation, thereby weakening the Provider's potential security over the property. The Complainants subsequently arranged for their solicitor to clarify the matter with the Provider.

The Complainants submit that the Provider questioned their affordability in respect of the proposed mortgage loan in question, even though their affordability had not changed since their receipt of AIP from the Provider in **November 2018**.

The Complainants submit that the Provider subsequently contacted them to request that the building cost of the new house be reduced. Following this request, the Complainants contacted the engineer and it was agreed that the cost of new build would be reduced to **€259,125**. The Complainants state that the Provider contacted them again to request evidence which showed they had sufficient funds of approximately **€15,000** to cover any contingency costs of the new build which they assert they supplied to the Provider.

The Complainants state that the Provider appointed an auctioneer to value the house upon completion. This auctioneer valued the house on completion at **€350,000**. The Complainants submit that the Provider was unhappy with this valuation and it took the view that the auctioneer had overvalued the property.

The Complainants submit that following the delays in respect of the Provider issuing them with full mortgage approval, they chose to abandon the process with the Provider and sought mortgage loan approval from an alternative lending institution. The Complainants submit that the other lender approved their mortgage loan application within one month of their application for the full mortgage loan amount required to build their home.

The Complainants state that as a result of the Provider's delays in processing the mortgage loan application, they had to delay the building of their new home by three months. The Complainants assert that this had a negative financial impact on them, including having to pay extra rent during that time, which they submit was **€750.00** per month.

The Complainants submit that the reason they initially chose to apply for a mortgage loan facility with the Provider was due to its offer of 2% cash back, once the mortgage was drawn down. The Complainants assert that since they had to take a mortgage loan facility with another lending institution, this cash back benefit ceased to be available to them.

The Complainants also submit that the Provider was offering a very competitive mortgage loan interest rate at the time of their application. The Complainants contend that as they had to take a mortgage loan facility with another lender, as a result of the delays caused by the Provider, they are now paying 0.5% extra on their monthly mortgage loan repayments as the interest rate with the other lender is higher.

The Complainants state that they have had to pay additional legal costs due to the Provider's delays in processing their mortgage application. The Complainants submit that they are disappointed by the manner in which the Provider treated them throughout the mortgage application process, and note that the Provider issued its Final Response Letter 62 days after the initial complaint was submitted.

The Complainants want the Provider to compensate them for the stress and financial burden that this matter has caused them.

The Provider's Case

The Provider submits in its Final Response Letter dated **21st June 2019** that its records show that the Complainants' application for mortgage loan approval was submitted for review on **5th November 2018** and Approval in Principle was issued on **9th November 2018**.

The Provider says that where an application for loan facilities, is received by the Provider, it is assessed by its Retail Credit Centre who may in turn request further information and/or documentation to satisfy the Provider's lending criteria. It notes that the Complainants were requested to furnish further documentation and that following a further review of their application, a new valuation was requested. The Provider does not accept that its assessment process caused undue delay to the Complainants

The Provider says that Approval in Principle is not a legally binding contract and does not provide a guarantee that a customer's mortgage application will be approved.

The Complaint for Adjudication

The Complaint is that the Provider wrongfully delayed in assessing the Complainants' mortgage loan application and that its procedures for assessing the mortgage loan application were unsatisfactory resulting in delay and financial burden being placed on the Complainants.

Decision

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

In arriving at my Legally Binding Decision I have carefully considered the evidence and submissions put forward by the parties to the complaint.

Having reviewed and considered the submissions made by the parties to this complaint, I am satisfied that the submissions and evidence furnished did not disclose a conflict of fact such as would require the holding of an Oral Hearing to resolve any such conflict. I am also satisfied that the submissions and evidence furnished were sufficient to enable a Legally Binding Decision to be made in this complaint without the necessity for holding an Oral Hearing.

A Preliminary Decision was issued to the parties on **7 January 2022**, 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.

Chronology of Events

- **October 2018:** Complainants lodge application for a mortgage with the Provider.
- **9th November 2018:** Complainants receive Approval In Principle from the Provider for mortgage loan for the sum of €262,500.
- **14th November 2018:** Provider's Retail Credit Centre requested an amended Certificate of Inspection as the First Stage Value quoted on the Certificate exceeded 75% of the then Current Market Value (CMV) of the property.
- **16th November 2018:** Revised Certificate of Inspection received.
- **20th November 2018:** Provider's Retail Credit Centre reply confirming that the Certificate is still incorrect and renew the Provider's request.
- **27th November 2018:** The Provider:
 - (i) requests clarification of Complainants' affordability;
 - (ii) requests reduction in the loan amount;
 - (iii) directs Complainants to contact local authority to confirm presence of enurement clause;
 - (iv) seeks clarification in respect of planning permission for a garage;
 - (v) seeks to confirm if a Development Contribution had been paid by the Complainants.

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- **28th November 2018:** Complainants provided garage plans and confirmed submission of plans; Complainants' solicitor confirmed that there was no enurement clause attaching to the planning permission; the mortgage loan amount was reduced as requested.
- **6th December 2018:** Revised Certificate of Inspection and Costings received.
- **13th December 2018:** Application referred for Property Review.
- **14th December 2018:** Provider contacts Complainants in respect of valuation report.
- **17th April 2019:** Letter of Complaint sent by Complainants to the Provider.
- **1st May 2019:** Provider receives Complainants' letter of 17th April 2019 as an attachment to an email.
- **8th May 2019:** Provider writes to the Complainants acknowledging receipt of Letter of Complaint.
- **21st June 2019:** Final Response Letter issued by the Provider to the Complainants.
- **9th July 2019:** Complaint made to the FSPO.

Approval in Principle

Mortgage approval in principle (AIP) was issued by the Provider to the Complainants on **9th November 2018**. Beneath the initial summary of the approval in principle details on **Page 1**, it states the following:

"This is an approval in principle only, it is not legally binding, so you should not rely on it to enter into contracts or buy properties at an auction"

The Approval in Principle additionally lists six conditions under the title 'Pre Letter of Approval Conditions' on **Page 2**. These include a Deed of Assignment of life policy and a satisfactory valuation report. The fifth requirement is listed as follows:

"5. Satisfactory Plans, Planning Permission, Completed Cert of Inspection including Project Costings, Details of Professional Advisor & Registered Builder & Supervising Architects/Engineers PI Schedule together with a Full Valuation to be submitted and reviewed by the Retail Credit Centre prior to Loan Offer. PLEASE NOTE The Loan amount may be reduced/withdrawn following receipt and assessment of the documentation.

A full property review to be completed by Retail Credit Centre prior to loan offer. PLEASE NOTE The Loan amount may be reduced/withdrawn following the property review.

[My underlining for emphasis]

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It is strongly recommended that this AIP is not relied upon to commence any works”.

The third, fourth and sixth requirements are also pertinent to aspects of this complaint:

“3. Confirmation that the applicants’ own funds are input into the transaction at the outset prior to loan offer;

4. Satisfactory valuation report for [Region];

6. Planning permission with not less than three years remaining in respect of a property at [Region].”

Analysis

I note that the Complainants approached the Provider in **October 2018** requesting mortgage loan facilities to build a family home on a gifted site. The Complainants supplied documentary identification, employment and financial information to the Provider. A request for Approval in Principle was submitted by the Provider to its Retail Credit Centre for assessment and Approval in Principle was issued to the Complainants on **9th November 2018**.

The Approval in Principle document has been received in evidence as part of this complaint and clearly states, as outlined above, that it is not to be relied upon to commence any building works. I note that of the six categories of documents listed as required by the Provider’s Retail Credit Centre, the most pertinent category is in respect of planning permission. I am satisfied that the recipient of this Approval in Principle document, was put on notice of the fact that upon the submission of the required documentation, the Credit Centre might reduce or withdraw the loan amount referred to in the AIP.

I note that within days, the requested documentation was submitted to the Provider on **12th November 2018**. It is apparent that these documents needed to be reviewed by the Provider before a loan could be offered. The Provider submits that:

“the assessment and validation of information and documentation provided by the Complainants resulted in further clarification and documentation requests from the [Provider’s] Retail Credit Centre to the Complainants”.

Following receipt of the planning permission details in respect of the Complainant’s application, the Provider’s Retail Credit Centre requested that they clarify with the local authority whether their planning application contained an enurement clause. The Provider explains that this is a restrictive clause placed by planning authorities on one-off house builds in the countryside, whereby the property may not be sold for a period of five to seven years. As a result of the data submitted concerning the relevant planning permission, the Provider requested clarification of whether an enurement clause was in place on the site.

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The Provider subsequently sought clarification in respect of the Complainants' affordability on **27th November 2018**. The Provider submits that this was because the loan amount requested, €262,500 appeared to be 100% cost of the build and was the maximum amount the Provider could consider based on the information and documentation furnished by the Complainants. As the Provider had been notified that the property would be built by way of direct labour, it was concerned that the estimated construction costs would not be sufficient to complete the build to a satisfactory standard. The Provider had to establish whether the Complainants had any further capacity to borrow additional funds, in the event of the build incurring additional costs.

The Provider subsequently requested the Complainants to reduce the loan amount on **27th November 2018**. The Provider submits that this request was made on the basis that the projected build cost of the construction was €262,500. The Provider refers to the additional costs that arise on such projects. Architect fees and local authority fees are cited as examples of charges that can typically represent 15% of the overall project cost. These charges were subject to a maximum cap of 5% of the overall project cost, and upon review by the Provider's Retail Credit Centre of the Project Costings document, these charges exceeded the 5% maximum. I accept that the request to reduce the loan amount was made to ensure that the associated build costs included, aligned with the Provider's mortgage lending policy.

On the same date, the Provider requested that the Complainants supply evidence that they had an extra €15,000 to cover any over runs on the building project. The Provider notes that it was mindful that the requested mortgage amount, €262,500, was the maximum that the Provider could lend. These concerns over the 'Balance of Funds' related to overruns that might arise to complete the build in totality, "*ensuring the proposed property and site is fully finished and serviced with all associated build costs paid, associated legal costs paid and the property is fitted to habitable standard*".

On **14th December 2018**, upon its receipt of the Complainants' revised First Stage Certificate of Inspection on **6th December 2018**, the Provider telephoned the Complainants in respect of the valuation figure submitted. The Provider determined the valuation to be above the market value when compared to its assessment of similar build properties in the same geographical location. The Provider referred to the requirement in the AIP letter furnished to the Complainants, which requires a satisfactory valuation report for the property before the Provider could fully approve the application.

I am satisfied that the conduct of the Provider was in adherence with its standard procedures in respect of such mortgage applications, as set out in its submissions. It is apparent from the chronology of events set out above that the Complainants received Approval in Principle on **9th November 2018**, which was clearly subject to the provision of further documentation. An amended Certificate of Inspection was requested on **14th November 2018**. This was supplied on **16th November 2018** and the request was renewed on **20th November**. Clarification was sought by the Provider one week later on **27th November 2018** in respect of the project costings and the Complainants' affordability, and on **14th December 2018** the property valuation was challenged.

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It is apparent from this timeline that as of **28th November 2018**, the outstanding issues were the request for a revised Certificate of Inspection and Costings (which was requested on **20th November 2018** and received on **6th December 2018**) and the question raised regarding the property valuation.

I note that the valuation is dated 12 November 2018 and this appears to have been the subject of a review by the Provider on 13 December 2018, a week after the revised Certificate of Inspection and Costings had been received. I note that on the following day, at that point, the Provider made contact with the Complainants seeking to arrange for a fresh valuation and at that point, the First Complainant advised that the Complainants were seeking mortgage facilities elsewhere, and did not wish to proceed any further with the Provider.

Whilst I note the number of days between the property valuation and when the Complainants were contacted again to progress matters, I am not satisfied that these can be regarded as undue delays. Rather, I consider the issues which arose to be reasonably foreseeable matters arising out of a mortgage application relevant to a self-build. I am also conscious that the documentation gathered by the Complainants in late November, with a view to progressing their mortgage application with the Provider, ultimately may have assisted them in the timeline, when they chose to move their application for mortgage facilities to another financial service provider.

I note that thereafter, approximately 4 months after the Complainants had switched provider, they sought to pursue a complaint regarding the manner in which the Provider had dealt with them.

The Complainants contend that their complaint was poorly handled by the Provider. They state in their letter to this Office of **9th July 2019** that *“we received the response 62 days after we made the complaint”*.

The Provider has the following obligations under the Consumer Protection Code (CPC) 2012:

“10.7 A regulated entity must seek to resolve any complaints with consumers.

10.8 When a regulated entity receives an oral complaint, it must offer the consumer the opportunity to have this handled in accordance with the regulated entity’s complaints process”

10.9 A regulated entity must have in place a written procedure for the proper handling of complaints. This procedure need not apply where the complaint has been resolved to the complainants’ satisfaction within five business days, provided that a record of this fact is maintained. At a minimum this procedure must provide that:

(a) The regulated entity must acknowledge each complaint on paper or on another durable medium within five business days of the complaint being received;

(b) The regulated entity must provide the complainant with the name of one or more individuals appointed by the regulated entity to be the complainant's point of contact in relation to the complaint until the complaint is resolved or cannot be progressed any further;

(c) The regulated entity must provide the complainant with a regular update, on paper or on another durable medium, on the progress of the investigation of the complaint at intervals of not greater than 20 business days, starting from the date on which the complaint was made;

(d) The regulated entity must attempt to investigate and resolve a complaint within 40 business days of having received the complaint; where the 40 business days have elapsed and the complaint is not resolved, the regulated entity must inform the complainant of the anticipated timeframe within which the regulated entity hopes to resolve the complaint and must inform the consumer that they can refer the matter to the relevant Ombudsman, and must provide the consumer with the contact details of such Ombudsman; and

(e) Within five business days of the completion of the investigation, the regulated entity must advise the consumer on paper or on another durable medium of: the outcome of the investigation; where applicable, the terms of any offer or settlement being made; that the consumer can refer the matter to the relevant Ombudsman, and the contact details of such Ombudsman.

The Complainants also a Letter of Complaint dated **17th April 2019** to the Provider and the first response they received from the Provider was a letter dated **8th May 2019**. The Provider submits that it first received correspondence from the Complainants on **1st May 2019** expressing their disappointment in the treatment received from the Provider. The Provider contends that this correspondence was received via-email and contained the letter dated **17th April 2019**. It asserts that it has no record of receiving the letter dated **17th April 2019** before **1st May 2019**.

The Provider then submits that it responded to the complaint on **2nd May 2019**. However, this response letter was included in both parties' submissions and is in fact dated **8th May 2019**. Irrespective of whether their response was sent on **2nd May 2019** or **8th May 2019**, this would have been within the required five business days from **1st May 2019**, when the letter dated **17th April 2019** was received by the Provider as an inclusion in the email of **1st May 2019**.

On that basis I am satisfied that the Provider adhered to the relevant provisions of the Consumer Protection Code. Upon receipt of the Complainants' letter, it sent a 5-day holding letter dated **8th May 2019**, which included the relevant points of contact within the Provider's institution. A 20-day hold letter was issued by the Provider on **29th May 2019** and the Final Response Letter issued on **21st June 2019**, which fell on the 36th day subsequent to the receipt of the complaint.

While I understand the difficulties experienced by the Complainants in having to postpone the building of their house by three months, ultimately, the decision to go to another lending institution to obtain a mortgage was theirs to make. I am satisfied that the Provider effectively advised the Complainants that receipt of Approval in Principle should not be relied upon to enter into contracts. It is apparent to me that the delays experienced by the Complainants were not in any way out of the ordinary, in respect of a mortgage application for a self-build.

I do not therefore, accept that there was undue delay on the part of the Provider and, having carefully considered all of the evidence before me, I accept that the Provider's actions have been, for the most part, satisfactory. Accordingly, I do not consider it appropriate to uphold the complaint.

Conclusion

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

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



MARYROSE MCGOVERN
Deputy Financial Services and Pensions Ombudsman

31 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.