



<u>Decision Ref:</u>	2022-0066
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Off-set Mortgage
<u>Conduct(s) complained of:</u>	Failure to process instructions in a timely manner Delayed or inadequate communication
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

This complaint is in relation to an Equity Release Loan.

The Complainants' Case

The Complainants submit that they wanted to complete some work at their home and they applied for an equity release loan in **February 2020**. The Complainants submit that there was an issue regarding securing the loan as the First Complainant had recently started a new job and was on probation. They submit that an exception was permitted, and the loan was approved on **14th February 2020**. The Complainants contend that they asked the Provider if COVID-19 would impact upon the drawdown of the loan and they were informed that they had a period of 6 months to draw down the loan, and they would have no issue, as their loan was fully approved.

The Complainants submit that on **16th April 2020**, the Stage One loan payment of **€25,000** was released to their account. The Complainants submit they contacted the Provider at the time to clarify why funds were released without an engineer's signoff. The Complainants contend that they spoke to several telephone agents and were advised that this was the date of drawdown they had requested, and that this type of loan was treated differently from other mortgage loans. The Complainants state they found this information confusing as they had previously been informed that engineer's signoff was required for any drawdown and they had already engaged an engineer at a cost of **€3000**. The Complainants have also enquired as to why engineer's signoff was required for Stage Two and Stage Three drawdowns, when €25,000 was released with no signoff and cost them €3000 unnecessarily.

The Complainants assert that on **27th April 2020**, **€600.00** was debited from their current account by the Provider. The Complainants state they assumed that the payment was in relation to legal fees, but called the Provider for clarity. The Complainants submit the telephone agent could not clarify what the payment related to. Following on from this, the Complainants state that they spoke with another agent who confirmed this was a legal fee charge and they were informed about the payment by their mortgage advisor. The Complainants acknowledge that this charge was specified in their loan agreement, however, they believe they should have been informed that the money would be debited from their account, on that date.

They state that on **18th May 2020**, they sent the Provider the engineer's signoff for State Two payment release. The Complainants state that the Provider asked if the second Complainant was receiving the COVID-19 payment and informed them that no stage payment could be released until they completed a COVID-19 assessment. The Complainants submit that they had to temporarily close their business due to the pandemic, but that this had no impact on their ability to meet mortgage repayments and they still maintained savings with another institution. The First Complainant submits that she is paid directly into her bank account, however, the Provider requested payslips to prove her income. The Complainants contend that the Second Complainant was asked to submit a letter from his accountant to confirm the business would reopen on **8th June 2020**.

The Complainants argue that the First Complainant managed the company accounts and they only used an accountant for their tax submission at the end of the year. They state that this delay was very stressful as they did not know when the release would be approved, and they were in a binding contract to pay their builder. The Complainants state they called the Provider on several occasions and explained that they continued to save throughout the pandemic and had more in their savings account than they required for the stage payment. The Complainants assert that a member of the Provider's staff requested a copy of their savings statements, and that based on this information, their Stage Two payment was released on **25th May 2020**.

The Complainants maintain that they submitted a request for the Stage Three payment of **€15,000**. They state that their engineer suggested that they would require an auctioneer's report and they contacted the Provider to clarify this. The Complainants maintain that the agent they spoke with confirmed that all they required for the release of the funds was an engineer's report. They state that the Provider contacted them on **2nd July 2020** to ask them to increase their home insurance to be fully comprehensive.

The First Complainant states that she contacted her insurer who confirmed that the house and all outbuildings were covered. Following this call, the Complainant contacted the Provider and asked what was required. The Complainant asserts that the Provider confirmed that the policy was adequate and that nothing further was required. The Complainants emphasise that this request caused further stress and was completely unnecessary.

The Complainants submit that, following on from this incident, they received a call from the Provider to request an auctioneer's report for the release of their Stage Three payment. The Complainants explained that they had been informed two weeks earlier, that they did not require an auctioneer's report and asked for a review of their file to be carried out. The Provider reviewed the file and confirmed by email on **6th July 2020** that the Provider would cover the €100 cost of the report due to the misinformation the Complainants had received. The Complainants submit that they were subsequently contacted by the Provider to provide confirmation that they had no outstanding payments to the County Council. The Complainants state that they verbally confirmed this, but the Provider requested a letter, which resulted in further delays and incurred further costs to the Complainants.

The Complainants submit that on **6th July 2020**, they received an email from the Provider advising that the only outstanding document was the auctioneer's report, and once this was received, the stage payment would be released. The Complainants submit that one hour later, they received a call from the Provider stating the need for a new completed COVID-19 assessment, despite only six weeks having elapsed since the previous such assessment. Furthermore, the Complainants submit that the Provider stated they required a 6-month Projection for the Second Complainant's business and would only accept a letter from their accountant. The Complainants state that their accountant was very reluctant to provide a letter due to COVID-19 and requested that they sign a waiver, so he was not liable for any such projections made. The Complainants submit that this process was stressful, and they were threatened with legal action by their builder. The Complainants issued a formal complaint to the Provider on **23rd July 2020**.

The Provider's Case

The Provider states that it received a complaint from the Complainants on **23rd July 2020** and issued its Final Response letter on **18th August 2020**. The Provider says that the Complainants encountered difficulties in obtaining their initial loan due to the First Complainant being on probation. The Provider submits that it allowed the loan to progress but for a lower amount than originally requested. It acknowledged that the Complainants were informed that there would be no issue with loan drawdown, as this was correct at the time. The Provider submits that as the pandemic progressed, policy had to be amended for the Provider to comply with its responsibilities to the Central Bank of Ireland. The Provider submits that because the Complainants' financial circumstances changed, they were required to complete a COVID-19 assessment.

The Provider submits that the Complainants were informed in their signed letter of offer that they would require an engineer's signoff for their second and third stage payments. The Provider maintains that the condition that the first payment was limited to **€25,000** was due to the requirement for an engineer's signoff for the release of further funds. The Provider submits that the Complainants were made aware that legal fees would be deducted, in the signed letter of offer. The Provider submits that it apologises if the Complainants were not made aware of a specific date for the fee to be applied; however, the fee of **€600** was discussed with their mortgage advisor prior to drawdown and it related to work completed for security perfection.

The Provider submits that a COVID-19 assessment was required when the Complainants submitted their Stage Two property report certificate, as the Complainants' financial circumstances had changed. The Provider submits that based on the fact that the Second Complainant had to close his business and was in receipt of the Pandemic Unemployment Payment, a review was required, not just by the Provider, but also by the Central Bank of Ireland.

The Provider acknowledges that the Complainants were incorrectly advised that the Provider did not require a final auctioneer's report and it apologised for this inconvenience. The Provider acknowledges that lapses in customer service occurred and offered the Complainants **€250** in full and final settlement of the complaint; this payment includes the **€100** payment towards the auctioneer's report.

The Complaint for Adjudication

The complaint is that the Provider maladministered the Complainants' equity release loan and drawdown, causing the Complainants undue inconvenience and additional expense.

The Complainants want the Provider to acknowledge the Complainants' issues and to offer them adequate financial compensation.

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 **26 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.

/Cont'd...

In the absence of additional submissions from the parties, within the period permitted, the final determination of this office is set out below.

I note the Chronology of Events detailed below:

- **6th January 2020:** Credit decision by Provider; offer made to Complainants for €40,000.00
- **8th January 2020:** Email from Provider to Complainants to advise Letter of Offer had issued, and requesting that Complainants contact Provider upon receipt of same to discuss next steps
- **9th January 2020:** Telephone call from Provider to First Complainant in respect of her employment
- **3rd February 2020:** Change in proposal; Complainants seek higher amount following the First Complainant's new employment
- **7th February 2020:** Telephone call from Provider to First Complainant in respect of underwriter's inability to lend increased sum due to her probation. States it would be willing to support lending of €40,000.
- **12th February 2020:** Phone call with First Complainant discussing underwriter's feedback
- **14th February 2020:** Phone call to Complainants from Provider advising of Approval in Principal for €60,000 and conditions contained therein
- **19th February 2020:** Letter of Offer issued for €60,000
- **21st February 2020:** Telephone call from Complainant; Provider confirms issue of Letter of Offer. First Complainant queries whether she has to use Valuer on Provider's panel; Provider advises she must do so.
- **24th February 2020:** Email from Provider to Complainants to enquire whether Letter of Offer has been received.
- **3rd March 2020:** Provider receives the Complainants' copy of Life Policy
- **5th March 2020:** The Provider requested the extension of the Life Policy for the term of the mortgage
- **12th March 2020:** Payment request form received by Provider
- **12th March 2020:** Home Insurance Policy documentation received, however, the interest is noted incorrectly and requires amendment
- **16th March 2020:** Confirmation of change of proposal, request to reduce term of the loan to 16 years to match term of life policy. Phone call with Second Complainant to discuss this change to proposal
- **18th March 2020:** Original valuation and MARS Cert received. Phone call from First Complainant to Provider. Complainant advised that application is before underwriter and to contact the next day for an update.

/Cont'd...

- **19th March 2020:** Letter of Offer issued for €60,000 over a 16 year term. Family Home Declaration received. Phone call from Provider to First Complainant. Complainant advised Provider requires copy of Marriage Certificate.
- **19th March 2020:** Telephone call from First Complainant who was advised an ALET form is required.
- **20th March 2020:** Marriage Certificate received by Provider.
- **24th March 2020:** Reinstatement value on home insurance policy received by Provider.
- **1st April 2020:** Phone call from First Complainant seeking to draw down immediately. First Complainant asked if the Provider required anything further. Provider advised First Complainant that a Direct Debit mandate was required and that because Letter of Offer issued on **19th March 2020**, the Complainants would have 6 months to draw down the funds.
- **5th April 2020:** Email correspondence between Provider and Complainants discussing address to send original Letter of Offer to
- **6th April 2020:** Email from Complainants to Provider enclosing Direct Debit Mandate and reply to Complainants asking if Letter of Offer had been returned, as only one page was showing on the Provider's system. The First Complainant queried what address to post the original letter to.
- **8th April 2020:** Mortgage released for completion
- **15th April 2020:** EFT issued for €25,000. Total drawn down to date amount was €25,000 and balance remaining was €35,000.
- **23rd April 2020:** Telephone call from First Complainant querying why only €25,000 issued rather than full €60,000 borrowed. She was advised that the €35,000 balance was displayed on the Provider's system as available to be drawn and that the €25,000 received is the first stage payment.
- **27th April 2020:** Telephone call from Provider to Complainant, who had limited availability to speak. Provider briefly advised her of situation regarding legal fees and drawdown control. The Provider followed up the phone call with an email to the First Complainant outlining basis for debiting legal fees, as well as the structure of the mortgage draw down stages.
- **15th May 2020:** Telephone call from First Complainant requesting a payment request form, which issued by email to First Complainant
- **19th May 2020:** Payment request form received by Provider
- **20th May 2020:** COVID Credit Review completed in advance of second stage drawdown. Phone calls between Provider and both Complainants to discuss.
- **22nd May 2020:** EFT issued for €20,000. Total drawn down to date €45,000 and balance remaining was €15,000.
- **15th June 2020:** Telephone call from First Complainant to Provider. Advised that engineer had been with the Complainants that day and had signed off. First Complainant queried payment of cashback offer upon drawdown, and queried

/Cont'd...

whether anything further was required from the Complainants, prior to draw down of final stage payment. Advised (incorrectly) that a payment request form was all that was required.

- **1st July 2020:** Email from First Complainant received by Provider requesting balance of payment. Complainant was requested to forward final valuation, fully comprehensive fire cover and the completed payment request form
- **2nd July 2020:** Email from Provider to Complainants advising that the Provider requires Customer equity release form, fully comprehensive home insurance and a final valuation. First Complainant calls Provider requesting a call back. Email received by Provider from First Complainant expressing dissatisfaction as she feels she was not made aware of all requirements for drawdown.
- **3rd July 2020:** Telephone call from Provider to First Complainant. Complainant expressed frustration with information she received on **15th June 2020**, as she states she was never advised about either the home insurance requirement or the final valuation requirement. Provider apologised for mis-information, and advised her of steps required to have the final stage payment issued.
- **3rd July 2020:** Email received by Provider from First Complainant. First Complainant states that she was not advised of the requirement for a final valuation during her phone call with the Provider on **15th June 2020** and that the cost of €100.00 for this valuation should be waived. Provider advised that the requirement for a final valuation is contained in the Letter of Offer.
- **6th July 2020:** Telephone call from First Complainant regarding final drawdown. First Complainant is awaiting the Provider's response to her email of **3rd July 2020** as she states she was told she didn't need to send in final valuation, and that she can't get an appointment with the valuer and she is under extreme pressure for money, from the builder.
- **6th July 2020:** Telephone call from Provider to First Complainant. Provider asked Complainant to confirm payment request, final valuation and confirmation planning fees have been paid. Provider confirms that final valuation was being performed that evening, which Provider advised the Complainants would not have to pay for.
- **9th July 2020:** Updated COVID Credit Review completed. Second Complainant is still in receipt of COVID payment but will reopen business when galleries are allowed to reopen in July. The Second Complainant already has work requests valued at €10,000 for when he reopens. The Provider is satisfied to continue to final drawdown.
- **10th July 2020:** Final valuation received by Provider from First Complainant
- **13th July 2020:** EFT issued to Complainants for €15,000. Total drawn to date is €60,000, with nil balance remaining. Email from First Complainant to Provider querying cash back on mortgage loan account
- **14th July 2020:** First Final Response Letter issued from Provider to Complainants
- **18th July 2020:** Complainants write further complaint letter in response to Provider's letter of **14th July 2020**, rejecting offer of €100.00 in full and final settlement of said

/Cont'd...

complaint and accepting *“the separate refund of €100.00 in respect of the auctioneer’s fee”*

- **24th July 2020:** Letter from Provider to Complainants acknowledging letter of **18th July**
- **18th August 2020:** Provider’s second Final Response Letter including offer of €250.00 in full and final settlement of this matter
- **1st September 2020:** Complaint made to FSPO
- **25th February 2021:** Provider’s letter to Complainants, having reviewed the case again, offering €400.00 in full and final settlement of the complaint
- **23rd May 2021:** Complainants’ response to Provider’s letter of **25th February 2021**
- **27th May 2021:** Provider responds to Complainants’ submissions of **23rd May 2021**, offering €1,500.00 in full and final settlement of the Complainants’ issues.

Evidence

(i) Letter of Offer dated 19th March 2020

This letter was signed and accepted by both Complainants on **27th March 2020**. The following are the extracts from the terms of the letter relevant to the complaint:

Clause (a) (iii) of the Special Conditions provides that:

“initial drawdown will be limited to EUR 25,000.00. A retention of EUR 15,000.00 will apply pending completion of the works and receipt of a satisfactory final inspection report confirming a valuation of not less than 600,000.00 along with the supervising architect’s opinion on compliance with planning and building regulations”.

Clause (a) (vi) of the Special Conditions provides that:

“The Borrower shall notify the Lender in the event of any change in the Borrower’s financial circumstances at any stage through the life of the Mortgage.”

Clause (a) (vii) of the Special Conditions provides that:

“A satisfactory final inspection by the Valuer appointed by the lender, confirming a minimum property value of EUR 600,000.00, accompanied by a photograph of the completed property, will be required. Please note this must be submitted to the Lender prior to the issue of the loan cheque (or the final loan cheque where the loan is being drawn down in stages).

/Cont’d...

Clause (a) (xiv) of the Special Conditions provides that:

“the Property Policy required pursuant to General Condition 3(b) of the Offer Letter must be effected in the name of the Borrower with the interest of the Lender noted thereon.”

Clause (a) (xvi) of the Special Conditions provides that:

“for the purpose of General Condition 2(a)(i) of this Offer Letter, the Lender’s Security shall comprise the Lender’s existing first legal mortgage over the Property which will secure the aggregate of the Borrower’s existing borrowings and this Loan. A security perfection charge of EUR 600 is payable by the Borrower and the Borrower’s acceptance of this Offer Letter signifies his/her consent to the Lender’s collecting this charge.”

General Condition 2(b) of the Letter of Offer provides that:

“the title to the Property must be good marketable title”.

General Condition 2(c) of the Offer Letter provides that:

*“the Lender **requires a valuation of the Property. At the Borrower’s cost**, the valuation must be provided by a valuer acceptable to the Lender and the valuation report remains the property of the Lender. No responsibility whatsoever is implied or accepted or warranty given by the Lender for the value or condition of the Property by reason of such valuation. A copy of the valuation report will be provided to the Borrower. The Borrower is strongly recommended to arrange an independent valuation and structural survey of the Property. The Borrower must obtain a **structural report of the Property from a qualified architect or engineer**, on terms acceptable to the Lender, but only if this is specifically required by the Lender or is recommended in the valuation report; all works recommended to be carried out to the Property must be carried out and the Lender may raise further conditions after receipt of any structural report or valuation report.”* (Emphasis added).

General Condition 3(b) of the Offer Letter provides that:

“the Property must be insured and kept insured against fire and usual risks for the full reinstatement value as stated in the valuation report and in respect of public liability, all on terms acceptable to the Lender and, prior to draw down of the Loan, the Borrower shall produce the Insurance policy (the “Property Policy”) to the Lender. This Property Policy must be effected either with the Lenders interest noted thereon or in the joint names of the Lender and the Borrower as the Lender may decide at its absolute discretion.”

/Cont’d...

(ii) Audio Evidence

On 19th March 2020, the First Complainant telephoned the Provider and I note the following exchange:

First Complainant	<i>Can you tell me if it's staged payments?</i>
Provider's Agent	<i>Let me check...The initial drawdown will be limited to 25,000 and a retention of 15,000 will apply, so it will be staged payments based on that there...yes, initial drawdown will be limited to 25,000 so that would be the first one, and then there would be a retention of 15,000 so realistically there would be three drawdowns based on that. With the retention...they'll hold back the last 15,000 until there's a certificate of compliance and a final inspection completed there.</i>
First Complainant	<i>Grand, and an engineer can do that, or just an architect?</i>
Provider's Agent	<i>Once they're suitable qualified, and they have appropriate professional indemnity insurance in place. I'll pop you an email with a list of valuers and I'll include the form there that they would complete so you can have a look at what it is they need to have...the appropriate bodies they're a member of</i>

On 14th February 2020, the Provider contacted the First Complainant and when the call was unanswered, left a voicemail requesting a call back. The First Complainant called the Provider that same day and at the outset of the call, I note the following exchange:

Provider's Agent	<i>Thanks for coming back to me, how are you today?</i>
First Complainant	<i>Good sorry now, with that, with the job I can't really take calls during the day, so that will catch you</i>

On 21st February 2020, the First Complainant telephoned the Provider looking to speak with a particular agent. I note the following exchange:

Provider's Agent	<i>[Agent] is in meetings until 3 o'clock, but she'll be able to give you a call after then, is that okay?</i>
First Complainant	<i>Fabulous, that's great. Thanks a million</i>

On the 18th March 2020, the First Complainant returned a telephone call to the Provider. I note the following exchange at the outset of the conversation:

Provider's Agent	<i>Thanks for coming back to me</i>
First Complainant	<i>No bother, sorry I missed a call, I just keep my phone on silent at work and I forget to take it off when I'm leaving</i>

/Cont'd...

(iii) Consumer Protection Code 2012 (as amended)

General Principles 2.2, 2.4 and 2.8 of the Consumer Protection Code are relevant to the present complaint and require that the Provider:

“2.2 acts with due skill, care and diligence in the best interests of its customers.

2.4 has and employs effectively the resources, policies and procedures, systems and control checks, including compliance checks and staff training that are necessary for compliance with this Code;

2.8 corrects errors and handles complaints speedily, efficiently and fairly”.

Provisions 4.1 to 4.4 of the Consumer Protection Code are also relevant and state as follows:

“4.1 A regulated entity must ensure that all information it provides to a consumer is clear, accurate, up to date, and written in plain English. Key information must be brought to the attention of the consumer. The method of presentation must not disguise, diminish or obscure important information.

4.2 A regulated entity must supply information to a consumer on a timely basis. In doing so, the regulated entity must have regard to the following: a) the urgency of the situation; and b) the time necessary for the consumer to absorb and react to the information provided.

4.3 A regulated entity must ensure that, where it communicates with a consumer using electronic media, it has in place appropriate arrangements to ensure the security of information received from the consumer and the secure transmission of information to the consumer.

4.4 A regulated entity must ensure that the font size used in all printed information provided to consumers is: a) clearly legible, and b) appropriate to the type of document and the information contained therein”

Analysis

It is apparent from a reading of the Special Conditions in the Letter of Offer signed and accepted by the Complainants on **27th March 2020** and by listening to the audio evidence (as noted above) that the Complainants were made aware that the drawdown of the loan would take place across three stages.

It also appears that although the Complainants may have encountered difficulties in initially securing the loan from the Provider, due to the First Complainant being on probation at her job at that time, they succeeded in obtaining credit for a lower amount than that originally sought.

/Cont'd...

(i) Requirement for Documentation

The Complainants drew down the first stage payment on **15th April 2020** and the Provider submits that at this time, it was in the early stages of implementing processes to adapt to the evolving COVID-19 pandemic. During a telephone conversation on **1st April 2020**, the Provider advised the First Complainant that further documentation, such as payslips, would not be required. The Provider confirms that although this information was correct at the time, it did not supersede the general obligation on the Complainants pursuant to Special Condition (a) (vi) of the Letter of Offer to notify the Provider in the event of any change in the Borrower's financial circumstances.

The Provider submits that by the time the Complainants sought to draw down the second stage payment in **May 2020**, the Provider's response to the pandemic had developed. It submits that it had a duty of care to ensure that borrowers had the capacity to service mortgage repayments, and as a result it had commenced a policy whereby it would perform COVID Credit Reviews to ensure that borrowers who were drawing down monies were in a position to service those repayments, during the pandemic.

Although this departure from the information originally provided may have understandably frustrated the Complainants, I accept that against the particular backdrop of the pandemic, the Provider was justified in requesting updated financial information from the Complainants. The Provider submits that "*there were occasions when information which was correct at the time and was provided in good faith to the Complainants was ultimately proved to be incorrect*". It might have been preferable if the Provider had issued the Complainants with a general information flyer or brochure advising them that the Provider was going to be continuously revising its approval process, as the pandemic evolved. However, I am satisfied that, although this evolving situation may have been frustrating for the Complainants, the Provider acted reasonably in these circumstances

(ii) Repeated COVID Credit Reviews

The Complainants submit that they were informed that if a period of six weeks elapsed between their COVID-19 Assessments, a new assessment would be required. The Complainants also submit that although six weeks had not elapsed between their application for the second and third stage payments, they were still required to complete a new assessment.

The Provider relies on the conditions within the Letter of Offer that stipulate that it was to be informed of any changes in the Complainants' financial circumstances and cites its reliance on this provision in respect of its continued engagement with the Complainants throughout the drawdown process. It submits that this provision was relied on, in its requests for COVID Credit Reviews to be updated in respect of the Complainants in **May and July 2020**.

The Provider also submits that due to the short time frame between the implementation of its new COVID review policy in late **April 2020** and the Complainants' request for the second stage drawdown, the Complainants were unfortunately not advised of the necessity for a credit review, prior to their request for the second stage drawdown. This is cited by the Provider as the reason why it was only upon receipt of the Complainants' payment request form, on **19th May 2020** that the Provider sought to perform a COVID Credit review of the Complainant's financial situation.

In respect of their COVID Credit reviews, the Complainants state in their submissions that the repeated nature of these reviews was unreasonable. The Provider submits that it performed its first COVID Credit Review on **20th May 2020** and that during this review, the Complainants advised that the Second Complainant was due to recommence work on **8th June 2020** and had an estimated €6,000 worth of orders awaiting him upon his return to work. It was on this basis that the Provider submits it was satisfied to proceed with the second stage payment.

The Provider submits that on **21st May 2020**, it amended its COVID review policy to ensure that such reviews would take place in a timely manner. This resulted in a validity period of 6 weeks for completed COVID Credit Review, at the end of which time, the case would have to be updated to include a review of up to date bank statements and payslips. The Provider submits that the timing of the introduction of this new policy was unfortunate, in respect of the Complainants, in that it was implemented the day following the Complainants' first COVID Credit Review. This is cited as the reason why the Complainants were not notified ahead of their review, that its results would only remain valid for six weeks. I accept that the six-week validity period, although frustrating for the Complainants and perhaps also for other customers of the Provider, was nevertheless proportionate and necessary to ensure that the potentially fluctuating borrowing status of customers could be taken into consideration.

The Complainants submitted their request for drawdown of the final stage payment on **2nd July 2020**. At that point, the most recent COVID Credit Review conducted by the Provider in respect of the Complainants was on **20th May 2020**; therefore, a period of more than six weeks had elapsed and the Provider required a further COVID Credit Review to be carried out. I accept that the Complainants had previously been advised that the COVID Credit Review results were only valid for six week periods, and so were put on notice of the fact that another such review would be conducted at this stage.

The Provider notes that the requirement for an additional review should not have come as a significant surprise to the Complainants in circumstances where the basis of their approval for the second stage payment was, as stated above, that the Second Complainant would be back at work. In July, however, the Second Complainant was still receiving PUP assistance which indicated a material difference in the Complainants' circumstances from that of the most recent review. On **8th July 2020**, a second COVID Credit Review was performed in respect of the Complainants and the Provider was satisfied with the Complainants' ability to make repayments on the mortgage. The final stage payment was therefore processed on **13th July 2020**.

The Complainants submit that despite the pandemic and the fact that the First Complainant was on probation, they were still reliable candidates to obtain a loan, due to their maintained savings with another institution. They also submit that as the Provider had been willing to provide the first stage payment, *“there should not have been an issue with the balancing payments”*. The Provider accepts that it was satisfied with the Complainants’ financial circumstances and the ability to maintain savings. However, it sets out in its reply that issues can arise after such a first payment has been made, which will impact upon its ability to make subsequent payments. I accept the Provider’s submissions in this regard. The Provider was at all times adhering to its obligations to act as a responsible lender; although the Complainants met the relevant criteria at the time of the first payment drawdown, the pandemic may have negatively impacted their ability to make subsequent repayments and the further checks made on their financial status in this regard were therefore totally reasonable and proportionate in my opinion.

Although the additional checks and reviews carried out by the Provider may have understandably caused distress to the Complainants, I am satisfied that the six-week reviews were a proportionate, reasonable and foreseeable measure adopted by the Provider in the midst of the COVID-19 pandemic.

(iii) Engineer Signoff not required for Stage One payment

The Complainants submit that upon the release of the first stage loan payment into their account, they contacted the Provider to enquire as to why the funds were released without an engineer’s signoff. They submit that they were informed on several occasions that this was their requested date of drawdown, and that this loan was treated differently from other mortgages. The Complainants submit that they had previously been informed that an engineer’s signoff was required in advance of any drawdown and they had therefore engaged an engineer at the cost of €3000.

The Provider submits that on **19th March 2020**, it contacted the First Complainant by telephone to discuss the loan. It submits that during this call it advised that an email would be sent to the First Complainant setting out the outstanding documentary requirements. Relevant extracts from this telephone conversation and email are set out above. The Provider submits that it was clear from this correspondence that the Provider required the form attached to the email as a pdf, to be completed by an architect or engineer prior to drawdown taking place. On **23rd March 2020**, the form was completed and returned to the Provider’s satisfaction and no further input was sought from the Provider prior to the first stage payment.

It appears that what occurred in respect of this limb of the complaint was a misunderstanding by the Complainants in respect of what was required. The Provider’s agent clearly informed the First Complainant that they would be emailed a form to be completed by an engineer or architect, and at no time was she informed that further documentation or input would be required from the engineer or architect, in order for them to receive the first drawdown. Reference was made on a number of occasions to the requirement for an inspection report. in advance of the final stage payment.

It is noteworthy that the Complainants were not requested to provide, nor did they provide, any engineer or architect report in advance of the second stage payment on **22nd May 2020**. This was not a requirement listed in the Letter of Offer. A listed requirement in the Letter, however, was a *“final inspection report confirming a valuation of not less than 600,000.00 along with the supervising architect’s opinion on compliance with planning and building regulations”*. This inspection report was supplied by the Complainants, and the Provider subsequently released the final stage payment.

After the parties’ initial submissions to this Office, the Complainants wrote a subsequent letter on **28th August 2020** noting that the Provider did not adequately address this particular aspect of their complaint. The Complainants query their receipt of the first stage payment *“without engineer signoff”*. The Provider accepts that it did not fully address the nature of the grievance as expressed by the Complainants. The Provider submits that in advance of the first stage payment being made available for drawdown, it had received an ALET form signed by an engineer from the Complainants, in line with the requirements as set out in its communications with them.

The Provider therefore does not accept that the first stage payment was made *“without engineer signoff”* and that it had misunderstood this aspect of the complaint when it issued its Final Response Letter on **18th August 2020**. The Provider submits that it interpreted this aspect of the complaint as meaning that the Provider required the engagement of an engineer or architect to supervise the works, prior to the first stage payment and answered the query on this basis.

While the Complainants had already retained the services of an engineer in advance of the first stage payment, I am satisfied that the Provider had not advised the Complainants that this was a requirement however beneficial it may otherwise have been to them, in terms of the building works. I accept that the Provider misinterpreted this particular aspect of the complaint, but clarified its response upon receipt of further submissions from the Complainants. I am satisfied that the Provider satisfied its duties in accordance with the Consumer Protection Code 2012 and acted with the necessary skill, care and diligence in respect of this particular aspect of the complaint.

(iv) Notice of Legal Fees charge

I am also satisfied that the Complainants were notified by Clause (a) (xvi) of the Special Conditions that they would be charged a sum of €600.00, referred to as a *“security perfection charge”* and that their signature of the Letter of Offer demonstrated their consent to the Lender collecting this charge. I do not accept the First Complainant’s submissions that the Provider had *“sold her”* the idea that paying the €600.00 would save her the difference between this fee and that offered by the Complainants’ own solicitor. The Letter of Offer clearly states the recommendation for the Borrower to seek independent legal advice in advance of signing it.

I accept the Provider's statement that the Complainants cannot simply state that *"the contract was full of legal jargon that we did not fully understand as we are not from a legal background"*. The Provider clearly advised the reader of its Letter of Offer, to seek legal advice before signing it, and I therefore reject this limb of the complaint. However, I appreciate that an element of inconvenience was caused to the Complainants, when no notice was given to them by the Provider of the particular date when the funds would be debited, and so they were charged the amount without warning of when it would happen.

In its submissions, the Provider refers to its Final Response Letter of **18th August 2020**, in which it stated that the date on which the security perfection charge would be debited *"is contingent on when the legal work in relation to security perfection is completed by the Provider"*. The Provider submits that in those circumstances, and having signed the Letter of Offer, it was incumbent upon the Complainants to ensure that sufficient funds were available to meet the charge and I accept this.

(v) Incorrect information provided regarding Auctioneer's Valuation Report

On **15th June 2020**, the First Complainant telephoned the Provider by phone and advised that an engineer had visited the property that day and had signed off on the final stage of construction. During this telephone conversation, the First Complainant asked the Provider to advise of anything else which was required of the Complainants, in advance of the drawdown of the final stage payment. The Provider's agent advised that nothing further was required, other than a Payment Request Form. The Provider acknowledges in its submissions that this information was incorrect and directly contradicted Special Condition (a)(iii) of the Letter of Offer, which clearly stipulates that a final valuation report was required before the Provider would release the final stage payment.

On **1st July 2020**, the Complainants submitted a Payment Request Form and engineer's report in respect of the final stage payment. The Provider responded to the Complainants requesting the above-mentioned final valuation report, evidence of fully comprehensive fire cover and the completed payment request form. The Complainants reverted to the Provider on **2nd July 2020** expressing their dissatisfaction with the requirement for the final valuation contrary to the telephone discussion of **15th June 2020**. The Provider ultimately agreed to refund the cost already incurred by the Complainants in respect of the valuation report of €100.00. The Provider confirms that this payment was processed on **9th December 2020**.

In respect of the requirement for a final inspection by a valuer in advance of the final drawdown, I am satisfied upon a reading of the Special Conditions within the Letter of Offer that the Complainants were put sufficiently on notice that they were required to provide a final valuation of the property before they could receive the third and final payment. The Complainants were made aware of, and signed and accepted an agreement to the effect that the Provider could request a valuation report of their property, at the expense of the Complainants. It is however, regrettable that the Provider's agent contradicted this information, when the First Complainant telephoned on 15 June 2020.

(vi) Complainants' request to conduct communications via email

The Complainants assert that the Provider persisted in contacting them by telephone, despite being told that this was not convenient for the Complainants. The Provider submits that upon a review of its relevant recorded calls with the Complainants that they Complainants did not, on any occasion, request that they not be contacted by telephone.

It is apparent from a listening of the audio evidence that on a number of occasions, the First Complainant advised that she was at work and had difficulty taking the call. On a number of occasions, the Complainants also requested that the discussions that took place on the telephone calls in question be confirmed or set out in an email to them. However, I must agree with the Provider that on no occasion did the Complainants request that such email correspondence take place instead of over the telephone. I accept that telephone calls were favourable to the Provider in its endeavours to facilitate the drawdown process as quickly as possible, and that indeed, the Complainants themselves initiated telephone conversations with the Provider as their primary means of communication. It is also apparent from the audio evidence that attempts were made by the Provider's agents to arrange subsequent telephone conversations at times that were convenient to the Complainants. Although the Complainants refer to the level of contact made by the Provider as 'excessive', I do not accept this. It is clear that each communication was made with the intention of progressing the mortgage drawdown process as quickly as possible.

I am satisfied that the Provider communicated with the Complainants in a reasonable manner and endeavoured to contact them in a manner that was convenient to them while ensuring a quick drawdown process.

(vii) Request for written confirmation of Home Insurance and County Council status

The Complainants submit that on **4th July 2020**, the Provider queried if their home insurance had sufficient cover for the home improvements. They say that *"they never requested written confirmation of this which led me to believe they had the information in front of them from the policy documents I had already provided them with"*. The Complainants further submit that a similar request was made in respect of the planning permission status. They submit that they advised the bank that there was no fee outstanding to the County Council in question, in accordance with the grant of planning permission letter already provided to them. The Complainants write that:

"[the Provider] insisted I contact the council and get something in writing to confirm there was not outstanding fees owed to the council. I believe this was not mentioned in their contract, it was another spontaneous request I was issued with despite them having the relevant paperwork that provided them with the information they required, had it been reviewed by them properly"

/Cont'd...

In its submissions, the Provider confirms that it sought written confirmation that no planning fees were outstanding to the relevant County Council. It rejects the assertion that this requirement was not mentioned in the Letter of Offer, and it refers to General Condition 2(b) in this regard which states that the title of the property must be “*good marketable title*”. The Provider clarifies that for a property to have such a title, it must be free of planning issues.

I accept the Provider’s submissions in respect of this particular aspect in that this was a reasonable and necessary request to make of the Complainants.

(vii) General provision of misleading information

The Complainants submit that they were furnished with misleading or incorrect information by the Provider on more than one occasion. It is apparent that at times, the Provider’s agents gave the Complainants information which, although given in good faith, was incorrect. Examples of this include telephone conversations that took place between the Provider and the Complainants on **1st April 2020**, **15th May 2020** and **15th June 2020**.

During the telephone conversation of **1st April 2020**, the First Complainant asked “*if things get dragged out are they going to start looking for payslips*”. The Provider’s agent informed the Complainants that once the full drawdown had taken place within a six-month period, nothing further would be required. The Provider acknowledges the deficiency in this advice, and that specifically, that the Complainants’ attention should have been drawn to Special Condition (a)(vi) which required the Complainants to inform the Provider if their financial circumstances changed at any point during the mortgage process.

On **15th May 2020**, the Complainants contacted the Provider by telephone requesting information on the necessary steps, to receive the second stage payment. The Provider acknowledges that it failed on this occasion to inform the Complainants that a COVID Credit Review would be performed upon their request for the second stage payment. By way of explanation for this failure, the Provider submits that its COVID Credit Review procedure was still in the process of being rolled out and that although the Complainants should have been advised that such a review would take place when they submitted a request for the second payment, this was not done due to its agent’s lack of familiarity with the procedure on this occasion.

On **15th June 2020**, the First Complainant contacted the Provider by telephone requesting information on the steps necessary to receive the third stage payment. The Provider acknowledges that on this occasion, it failed to advise the Complainants that it would require a final valuation of the property in advance of the final payment being made available. This requirement was set out in Special Condition (a)(iii) of the Letter of Offer. The Provider’s agent incorrectly informed the Complainants that a completed payment request form was all that was required. This error resulted in a delay in the Complainants accessing their final stage payment.

It is apparent that the Provider failed in its obligations under the Consumer Protection Code during the above-mentioned telephone conversations, in that it failed to adequately advise the Complainants in advance, of the COVID Credit Reviews. Although its introduction of these reviews was a necessary and proportionate response to the pandemic, it seems that it may have failed to appraise its agents adequately of the measures being introduced, which resulted in delay and inconvenience being caused to the Complainants.

Conclusion

In respect of the Complainants' grievance that additional documentation was required from them during the drawdown process, when they had been advised otherwise, I accept that against the particular backdrop of the pandemic, the Provider was justified in requesting updated financial information from the Complainants. Although it might have been preferable for the Complainants to have been issued with, for example, a general information notice or flyer advising them that given the evolving situation, the Provider was going to be continuously revising its approval process, and I am satisfied that the Provider acted reasonably in all the circumstances, and I reject this aspect of the complaint.

In respect of the repeated nature of the COVID Credit Reviews, I am satisfied that although the additional checks and reviews carried out by the Provider may have understandably caused distress and inconvenience to the Complainants, the six-week reviews were a proportionate, reasonable and foreseeable measure adopted by the Provider in the midst of the COVID-19 pandemic. Particularly, I note that it was a specific term of the Letter of Offer that the Complainants notify the Provider "*in the event of any change in the Borrower's financial circumstances at any stage through the life of the Mortgage*". It cannot be disputed that the Complainants' financial circumstances changed over the course of the drawdown process. I accept that the Provider was entitled to satisfy itself that the Complainants were still in a position to meet their repayments, before making further credit available for drawdown against the background of the pandemic, and I therefore reject this aspect of the complaint.

In respect of the legal fee of €600.00 that was debited from the Complainants' account allegedly without sufficient warning, I am satisfied that the Complainants consented to the collection of this charge and therefore I reject this aspect of the complaint.

In respect of the Complainants' grievance about the Provider's methods of communication, I also reject this aspect of their complaint. I accept that on several occasions, the First Complainant noted that she was taking the call while at work, or had stepped out of her office to make the call, but at no point was it noted that email correspondence would be preferable to telephone communications altogether. Indeed, the Complainants often initiated their communication with the Provider via telephone. I am satisfied that the Provider communicated with the Complainants in a reasonable manner and endeavoured to contact them in a manner that was convenient to them, while ensuring a quick drawdown process.

In respect of the Complainants' grievance that the Provider provided them with misleading and incorrect information, I accept that there were indeed failures on the Provider's part in that regard. It is apparent from listening to the audio evidence in particular, that on a number of occasions the Provider gave information to the Complainants that was either inaccurate or incomplete. I accept that the measures introduced by the Provider such as the COVID Credit Checks were proportionate and necessary given the tumultuous nature of the pandemic, however the Provider could have done more to ensure that its agents were at all times giving the Complainants, at the very least, correct information. It is noted that on more than one occasion, agents would venture a 'guess' as to what the Complainants could expect during the drawdown process, rather than attempting to confirm the actual procedures to the Complainants.

I am satisfied that the Provider's final response letter and its subsequent submissions contain a sincere apology for the deficiencies and failures in the specific dealings with the Complainant set out above. I acknowledge that the Provider has long since acknowledged these errors and has already compensated the Complainants for the cost of having a final valuation, and has offered a gesture of €1,500.00 in full and final settlement of these lapses in its Consumer Protection Code obligations.

On the basis of the evidence before me, I accept that the Provider's gesture is very reasonable and on the basis that this remains open to the Complainants for acceptance, I do not consider it necessary or appropriate to make any further direction in order to bring this matter to a conclusion. It will be a matter for the Complainants to communicate directly with the Provider, if they wish to accept the compensatory measure which is available to them from the Provider and which I consider to be appropriate in the circumstances. Accordingly, noting the Provider's early acknowledgement of the errors it made and its appropriate offer to redress the situation, I do not consider it appropriate to 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.



MARYROSE MCGOVERN
Financial Services and Pensions Ombudsman (Acting)

17 February 2022

/Cont'd...

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.

