



<u>Decision Ref:</u>	2022-0080
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Tracker Mortgage
<u>Conduct(s) complained of:</u>	Failure to provide correct information Dissatisfaction with customer service Failure to provide product/service information
<u>Outcome:</u>	Upheld

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

The complaint concerns a mortgage application which the Complainants state was mismanaged, in particular regarding incorrect information for the deposit required and poor customer service.

The Complainants' Case

The Complainants submit they telephoned a Provider branch on **17 July 2020**, "*with a view to seeing if we were eligible to move house*". They state that they spoke with the branch mortgage advisor, who told them that the Provider "*could you do something for us based on coming up with a 10% deposit.*" The Complainants contend that they were also advised by the Provider during this call, to put their house on the market early "*in order to drum up interest*".

The Complainants submit that, "*based on this*", they took steps to place their house on the market and that the Provider requested certain information from them in relation to the mortgage application. They contend that a few days later they advised the branch mortgage advisor, by telephone, that their house "*was being put on the market and also the expected value of the house.*" They further contend that they were told again during this call that they would need a 10% deposit.

The Complainant said that during a third call to the Provider's branch the following month, the mortgage advisor "*ran through the numbers...based on a 10% deposit.*" They contend that the Provider sent them the application form for their mortgage approval, "*showing*

the total value of the two loans combined to be 90%". The Complainants submit they signed the application form and sent it back to the Provider.

The Complainants contend that the Provider mortgage advisor telephoned them on **31 August 2020** and told them that they would need a 20% deposit. The Complainants submit that they could not provide the additional deposit amount "*at such short notice*" and they visited the Provider branch that day to take copies of their signed mortgage application. They further submit that their signed form had been amended. The Complainants contend that they made a formal complaint to the Provider on two grounds namely that the Provider had advised them wrongly to place their house on the market, and that the Provider had offered them a product that it could not provide.

The Complainants say that shortly after it was revealed they would require a 20% deposit, they had viewings on their house and had a cash offer by the first viewer. They also stated they had a deposit on their new home at the time, but owing to the position of the Provider, the house was sold to somebody else. They assert that they were put in a position where they should have been celebrating the sale of the house which would have allowed them to move into their new home, but instead "*due to gross negligence*" on the part of the Provider they lost this new home and were forced into a life changing decision in a highly stressed state. The Complainants have added that they have now lost the tracker mortgage due to the Provider's negligence.

The Provider's Case

The Provider acknowledges that at the "*point of inquiry*", its mortgage advisor did not communicate to the Complainants that:

"...as Second Time Buyers, the maximum mortgage that could be considered (as per Central Bank of Ireland Mortgage Lending Rules) is 80% of the property purchase price".

The Provider states that there was some capacity within the product to consider a 90% loan mortgage application for second time buyers, but that this could only be considered "*in a Negative Equity Situation.*"

The Provider submits that its mortgage advisor misunderstood this option, and did not inform the Complainants that the maximum mortgage it could consider was 80% of the property purchase price. The Provider further submits that when the misunderstanding became apparent, its mortgage advisor immediately brought it to the Complainants' attention. In its final response letter, the Provider apologises that the Complainants did not receive the correct information.

The Provider contends that it did not advise the Complainants to commence the sale of their property. The Provider, in its final response letter, addressed the Complainants' contention that their signed mortgage application was amended by the Provider. The Provider stated that its advisor noticed on the application for credit form, that the

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Complainants had not ticked the boxes to confirm receipt of the product information which the mortgage advisor had posted to them on **17 July 2020**.

The Provider has submitted that because the Complainants had signed the section of the form, and because they had not brought this to the attention of the Provider's agent, the Provider's agent assumed that the Complainants had received this documentation and "ticked the boxes".

On **16 April 2021** the Provider sent a letter to the Complainants stating that it would like to sincerely apologise for the service they received and would like to offer them "*a gesture of goodwill in the amount of €5000 in full and final settlement of the matter.*"

The Complaint for Adjudication

The complaint is that the Provider mismanaged the Complainants' mortgage application in July and August 2020, including furnishing them with incorrect information in relation to the deposit required, and proffered poor customer service to the Complainants in or around the same period.

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 **9 February 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

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

I note that on **17 July 2020** the First Complainant telephoned the Provider to inquire about applying for a mortgage because the Complainants were looking to move property. The Provider's agent discussed the options available to them, and after reviewing their existing tracker mortgage account, the Provider's agent advised the First Complainant about the Provider's "*Mortgage Mover*" product. The Provider has stated that this type of product is for customers who are looking to move home under a negative equity or on a tracker interest rate. The product includes the following requirements:

Where an applicant is in positive equity, they are required to contribute a minimum of a 20% deposit of the purchase price towards the purchase of the new property, or if an applicant is in negative equity they are required to contribute a minimum of a 10% deposit of the purchase price towards the purchase of the new property.

The Provider submits that

"as it was established that the Complainants were in positive equity, the Complainants would be required to contribute a minimum of a 20% deposit of the purchase price towards the purchase of the any new property. Regrettably the mortgage advisor inadvertently quoted a 10% minimum deposit requirement. The bank apologises for this error."

The Complainants contend that they were also advised by the Provider during this call to put their house on the market early "*in order to drum up interest*". The Provider has submitted a statement of recollection from the Provider's agent in question who stated that

"I wish to confirm under no circumstances did I advise [the First Complainant] to put his house on the market."

The Provider's agent also stated, to the best of her recollection, she would have posted out the mortgage application form, mortgage brochure, terms of business, terms and conditions and personal and business banking charges booklet, variable range mortgage policy - summary statement and summary data protection notice, but added:

"Unfortunately I have no proof of this. Since the Covid-19 pandemic face to face meetings suspended [sic] it has been my practise to post out this documentation to customers after a telephone conversation."

I note that the Complainants have stated that on **20 July 2020** they telephoned the same mortgage advisor and told her the house was being put on the market and also the expected value of the house.

On **1 August 2020** the First Complainant sent an email to the mortgage advisor enclosing supporting documentation for the mortgage application. The Provider has stated that the mortgage advisor was on annual leave at this time, but 9 days later, on **10 August 2020** the

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mortgage advisor emailed the First Complainant after returning from leave, seeking to have pay slips sent to her. She also enquired whether the First Complainant had completed the application form.

The Provider has submitted that on **11 August 2020** the mortgage advisor telephoned the First Complainant and he confirmed that he wanted to proceed with the mortgage mover product. The Provider has said that the mortgage advisor told the First Complainant that two mortgage applications would have to be loaded on the Provider's computer system, namely (a) the initial application for the existing balance on their tracker mortgage of €146,900.99 and (b) the application for the remaining mortgage amount, being required of €123,099.01. This was a total amount of €270,000.

The First Complainant consented to the applications being loaded on the system which the Provider's mortgage advisor stated she did, and she also stated she posted out the relevant forms to be signed.

The Provider has submitted that on **31 August 2020**, when the mortgage advisor received the signed forms and supporting documentation, she recognised that the Complainants would need to have a deposit of 20% and not 10% which she had *"incorrectly informed the first Complainant during in their discussion on 17th July 2020"*.

The Provider had submitted that the mortgage advisor immediately telephoned the First Complainant to indicate the requirement of the 20% deposit and apologised for her error stating that they would require approximately a further *"€30,000 plus associated costs"* if they wished to progress the application. The Provider has submitted that the First Complainant expressed his dissatisfaction with this information and stated that they would not be able to get the extra funds to complete the mortgage application.

The Complainants have said that when this situation was outlined by the mortgage advisor, it was a shock to them and that they did not have €30,000 extra. They added that the mortgage advisor had *"prepped them for a 90% mortgage"*. They further submitted:

"...when we explained to her that our house was up on the market and we had viewings and she said we took her up wrong about putting the house on the market. She lied. But it's our word against hers. We just received a cash offer for the asking price of our house. Where do we go from here... it's heart breaking".

I note that the Provider has submitted that the alteration of the signed application for credit documentation was carried out, with the intention of enabling the application to progress. It says that this alteration was never intended to misrepresent the Complainants' application. The Provider has said that because of the submission of the application to the Retails Credit Centre (RCC) for assessment, on the same day as when the Complainants arranged to call to the branch to collect the documentation, it was not possible for the Provider to give the Complainants copies of the amended form, prior to the Complainants' attendance at the branch. I note that later that day, the First Complainant telephoned and requested a copy of all documentation from the branch.

Following this conversation, he visited the branch, and the mortgage advisor gave him the requested documentation.

The First Complainant has asserted in the Complaint Form to this Office on **3 September 2020**, that when he attended the branch on **31 August 2020**:

“The application had been altered with biro with the loan amount amended, the value shown to us of which we signed is still clearly visible underneath. In addition there were tick boxes above our signatures which indicated certain documents were sent to us which were ticked not by us. This was indicated via text message to the mortgage advisor’s line manager.”

The Provider has submitted that while preparing the file to be submitted to the Bank’s Retails Credit Centre (RCC), the mortgage advisor amended the signed application for credit to the amount of €92,700 *“should the Complainants have wished to proceed with the mortgage application”*.

The Provider has submitted that the mortgage advisor noticed on page 5 of the application for credit, that the Complainants had not ticked the boxes to confirm receipt of their product information which the mortgage advisor believed she had posted to them on **17 July 2020**, stating:

“as the advisor had posted this documentation to the Complainants, the advisor assumed they had received the documentation and “ticked the boxes”

The Provider has submitted that this was:

“obviously not the case and [the mortgage advisor] should have called to confirm whether or not you received this information.”

It is also noted that the said mortgage advisor stated that, to the best of her recollection, she would have posted out the documentation but *“Unfortunately I have no proof of this”*.

The Provider has submitted that the Second Complainant also telephoned the mortgage advisor on the same day, informing her of her dissatisfaction regarding the misinformation given during the telephone call of **17 July 2020** and she requested that the mortgage advisor have the line manager contact her. The Provider has submitted that the branch manager contacted the Second Complainant and advised he would log the issue as a complaint.

On **1 September 2020** the Provider's branch manager telephoned the Second Complainant and apologised for the upset caused by the *“mis-information given to the first Complainant on the telephone call of the 17th July 2020”*. He said that because of the Central Bank Prudential Lending Rules, the Provider was unable to consider providing a 90% mortgage to the Complainants.

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On **2 September 2020**, the Second Complainant sent an email to the Provider's Area Manager, setting out the circumstances surrounding the error, including the cash offer for the house.

On **4 September 2020** the area manager of the Provider again set out the 20% deposit rules under Central Bank guidelines and advised that the mortgage advisor had made an error and sincerely apologised for this.

In this email, however, the Provider strenuously denied that its agent instructed the First Complainant to put the house on the market, as their mortgage application had not been approved. The email also stated that they should be aware that they still did not have mortgage approval, but if they had a 20% deposit available to them, the Provider would be happy to process the application and seek approval.

On **9 September 2020** the Provider's branch manager issued a final response letter to the Second Complainant, apologising for the misinformation supplied by the advisor. Following this final response letter, the Provider says that at the end of **September 2020**, the First Complainant contacted the manager in question by telephone to discuss the possibility of securing an exception under Central Bank rules for their application. The Provider stated that the manager performed an assessment, but the application did not qualify for an exception, because of an "ICB issue" on the Complainants' ICB (Irish Credit Bureau) records. The Complainants redeemed their existing mortgage on **30 November 2020**.

On **16 April 2021** before the formal investigation of this office had commenced, I note that the Provider sent a letter to the Complainants stating that it would like to sincerely apologise for the service they received and would like to offer them "*a gesture of goodwill in the amount of €5000 in full and final settlement of the matter.*"

Analysis

Provision 2.8 of the Central Bank of Ireland's Consumer Protection Code 2012 (CPC 2012), sets out certain obligations, including that a regulated financial service provider is required to "*corrects errors and handles complaints speedily, efficiently and fairly*". Provision 10.5 states:

"10.5 A regulated entity must maintain a log of all errors which affect consumers.

This log must contain:

- a) details of the error;*
- b) the date the error was discovered;*
- c) an explanation of how the error was discovered;*
- d) the period over which the error occurred;*
- e) the number of consumers affected;*
- f) the monetary amounts involved;*
- g) the status of the error;*
- h) the date the error was resolved;*

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- i) the number of consumers refunded; and*
- j) the total amount refunded.”*

and provision 10.6 states:

“10.6 A regulated entity must maintain a record of all steps taken to resolve an error which affects consumers, including details of the steps taken where:

- a) any affected consumers were dissatisfied with the outcome;*
- b) there were difficulties contacting affected consumers; and*
- c) a refund could not be repaid.”*

It appears to me from the evidence, that there were two serious errors apparent concerning the Complainants’ mortgage application. The first occurred on **17 July 2020** during which the Provider’s mortgage advisor incorrectly told the Complainants that they could avail of a mortgage with a 10% deposit, rather than the 20% which would be required.

The purpose of the Complainants holding discussions with the mortgage advisor, was to receive reliable advice regarding suitable product offerings which would meet the Complainants’ needs for a mortgage facility. It is therefore particularly disappointing that a person bearing a title suggesting that her advice could be relied upon, provided such fundamentally incorrect information to the Complainants at that time. This suggests to me that the mortgage advisor was unfamiliar with the mortgage mover product and indeed perhaps unfamiliar with the Central Bank rules which would require compliance.

I accept on the evidence, that the Provider complied with Provisions 2.8, 10.5 and 10.6 in respect of this error, in circumstances where it has been open and forthcoming about (i) when the error was discovered on **31 August 2020** and (ii) the steps taken to communicate the error and (iii) how it sought to resolve the matter with the Complainants on the same day. I also note that the Provider, early in this investigation, apologised and accepted that there had been an error.

Despite the error, at that point, the mortgage had not yet been approved and although the Complainants say that they already had viewings on their own home, in my opinion, this did not prevent them from taking their then current home off the market, to enable them to properly consider their position, in the context of this development. Whether or not the mortgage advisor had told the Complainants during their initial discussions that they should put their house on the market very promptly, I am satisfied that at this point, the Complainants ought to have recognised the difficulty they were facing and in my opinion, they should have given significant consideration to withdrawing their property from the market, until such time as they could make a decision as to the most suitable way to proceed. As the interactions between the Complainants and the Provider had not yet given rise to a final mortgage approval, the transaction was still in its initial stages.

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I am satisfied however on the evidence before me that the Provider's mortgage advisor mismanaged the Complainants' mortgage application in providing them with incorrect information in relation to the deposit required, in clear breach of Provisions 2.2 and 4.1 of CPC 2012.

I take the view that this breach was particularly serious in circumstances where it was about six weeks before the error was realised, during which time the Complainants say they had taken steps, to secure a new home, together with the sale of their current home.

The second issue occurred on **31 August 2020**, when the same mortgage advisor altered the contents of the mortgage application form. The Provider says that the mortgage advisor carried out this amendment under the assumption, that the documentation in question had been provided by the Complainants.

I find it entirely unsatisfactory that the mortgage advisor deemed it appropriate to proceed on such an assumption, without firstly clarifying this with the Complainants and without discussing potential amendments to the application form, if required, and how this could be arranged. This second issue exacerbated the mismanagement of the mortgage application and, unlike the first error, it was discovered only by the diligence of the Complainants themselves. This is particularly unsatisfactory, as the said mortgage advisor has submitted to this Office in her statement, that she had no proof that the documentation had been sent on **17 July 2020**, which leads me to conclude that she could not have ascertained, with any degree of certainty, that the documentation had actually been sent, prior to her altering the application form. Indeed, even if there had been clear evidence and records available to the mortgage advisor that the documentation in question had been sent, this did not make it appropriate for her to alter the contents of the application form which the Complainants had signed.

I am surprised by the Provider's contention that the application which had been altered by the mortgage advisor was submitted by her to RCC "*should the Complainants have wished to proceed with the mortgage application*". I am conscious that on the same day as she discovered her mistake in the information she had given to the Complainants, she elected to herself amend the contents of the Complainants' application form and send it on. This is something of a mystery to me, when one would expect instead that she would have arranged further discussions with the Complainants to explore how they wished to proceed, if at all. As it happened, the Complainants attended the branch later that same day. If the parties had discussed the matter further, this would have brought about an opportunity for the mortgage advisor to explore the Complainants' wishes regarding the mortgage application, now that they were aware of the requirement for a 20% deposit, in order to qualify for the mortgage mover product, and this would have facilitated any amendments to the application form, which the Complainants may have wished to authorise, in the context of the changed situation in which they found themselves.

The evidence in this matter raises very serious considerations regarding the quality of the service which the Provider offered to the Complainants, including mis-information and the amendment of important details on the Provider's documentation suggesting that the Complainants had received certain documents when in fact, this was entirely unclear. It is a very serious concern to this Office that the Provider's agent appears to have thought

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nothing of simply amending an application form to change the amount of the facilities being sought by the Complainants, thereby changing the contents that had already been verified by the signatures of the Complainants, earlier that month.

I take the firm view that these combined issues constitute conduct on the part of the Provider which was not only unreasonable but was also improper within the meaning of **Section 60(2)(b)** and **(g)** of the **Financial Services and Pensions Ombudsman Act 2017**.

I am satisfied that this complaint should be upheld. Whilst I note that the Provider has made an offer in open correspondence of a compensatory payment of €5,000, with a view to redressing its conduct, I do not consider this figure to be adequate in the circumstances.

In my opinion, the Complainants bear a considerable degree of responsibility for their current situation, as they decided to proceed with the sale of their home, when they were clearly on notice of the difficulty which had arisen. I note in that respect that when they discovered the issue, they were having viewings of their home, but the property could at that stage have been withdrawn from sale. Be that as it may, I am also conscious that these events have ultimately led to the Complainants missing out on the opportunity to utilise the Provider's mortgage mover product with a view to retaining a significant element of their borrowing on their previous tracker mortgage rate. Accordingly, I consider it appropriate to uphold this complaint and to direct the Provider to make a compensatory payment to the Complainants as directed below, in order to conclude.

In all of these circumstances, and given the evidence of significant wrongdoing by the Provider, I consider it appropriate to draw this matter to the attention of the Central Bank of Ireland, for such action as it may consider to be appropriate.

Conclusion

- My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is upheld on the grounds prescribed in **Section 60(2)(b) and (g)**.
- Pursuant to **Section 60(4) and Section 60 (6)** of the **Financial Services and Pensions Ombudsman Act 2017**, I direct the Respondent Provider to make a compensatory payment to the Complainants in the sum of €10,000 (ten thousand euro) to an account of the Complainants' choosing, within a period of 35 days of the nomination of account details by the Complainants to the Provider. I also direct that interest is to be paid by the Provider on the said compensatory payment, at the rate referred to in **Section 22** of the **Courts Act 1981**, if the amount is not paid to the said account, within that period.
- The Provider is also required to comply with **Section 60(8)(b)** of the **Financial Services and Pensions Ombudsman Act 2017**.

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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)

7 March 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.