



<u>Decision Ref:</u>	2022-0119
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Repayment Mortgage
<u>Conduct(s) complained of:</u>	Failure to provide calculations Delayed or inadequate communication Dissatisfaction with customer service Fees & charges applied Failure to process instructions in a timely manner Failure to provide product/service information Failure to process instructions Failure to offer appropriate compensation or redress CBI Examination
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

This complaint concerns expenses arising from the Provider's delay in approving the Complainants' mortgage.

The Complainants' Case

The Complainants applied for a mortgage with the Provider in **January 2018** to fund the construction of a new house. The Complainants submit that delays arose during the application process, and the mortgage was not approved until **June 2018**.

The Complainants say that, as a result of this delay, they had to live in rented accommodation for a longer period. They note that the costs of construction rose during the period of delay, and they rely on the opinion of a quantity surveyor in this regard.

The quantity surveyor's letter, dated **30 August 2019**, states that building costs had increased due to inflation by 11% "*since January 2018*". The surveyor did not state the end date of this calculation, but noted that there had been further increases during **2019**. He concluded that the construction cost for the Complainants had risen by €22,000 (twenty-two thousand Euro). The Complainants say that they incurred an additional fee in engaging the services of this surveyor to substantiate their claim.

The Complainants are seeking compensation for professional fees they have incurred as part of the application process. The Complainants retained a broker, with an original fee of €900 (nine hundred Euro). As a result of the Provider's conduct and delays, the Complainants say that the broker's fee increased to €2,000 (two thousand Euro).

The Complainants submit that Provider's customer service and tone of engagement were completely unacceptable.

On **16 August 2018**, the Provider wrote to the Complainants and made an offer of €3,500 (three thousand, five hundred Euro) in full and final settlement of the complaint. This offer is broken down into four distinct elements of the complaint.

The Provider acknowledged that there was a "*maximum twelve week delay*", and therefore offered a payment of €2,475 (two thousand four hundred and seventy-five Euro) for three months of rent at €825 (eight hundred and twenty-five Euro). The Provider acknowledged a data breach, which is not the subject of this complaint, and offered €225 (two hundred and twenty-five Euro). The Provider offered €300 (three hundred Euro) to compensate for two mortgage valuations, where its procedures for the valuations had not been properly outlined in advance. Finally, the Provider noted that the "*tone and dialogue*" of its agent dealing with the Complainants "*was not suitable*". It agreed with the Complainants that its procedure relating to the second Complainant's parental leave was unnecessary and not family friendly. For these customer service issues, it offered €500 (five hundred Euro).

The Complainants say that this compensation offer is "*derisory and completely unacceptable*". The Complainants submit that the Provider has acknowledged the delay, but has ignored the rest of the Complainants' expenses that resulted from the delay. The Complainants also question the calculation of the compensation, as they had originally been offered €1,500 (one thousand, five hundred Euro) prior to the recognition of the rental costs.

The Complainants say that this figure does not include compensation for the stress and inconvenience, in addition to the time lost and "*local embarrassment*", that they have suffered.

The Provider's Case

The Provider set out a detailed timeline of its interactions with the Complainants leading up to the complaint.

The Provider says that on **26 January 2018**, the Complainants application for a mortgage of €200,000 (two hundred thousand Euro) was sent by their broker. The Provider notes that whilst the Complainants signed their mortgage application with their broker on **19 January 2018**, their application was not underway from that date. The Provider would normally not have an applicant sign and date an application, until all supporting documentation had been gathered.

/Cont'd...

The Provider corresponded with the broker following this, regarding necessary outstanding documentation. The Provider continuously communicated with the broker and the Complainants until **29 March 2018**.

The Provider began to enter the Complainant's information onto the system on **9 March 2018**, but did not receive all of the necessary documentation until **27 March 2018**.

The Provider says that, during this period of correspondence, the first Complainant arranged a valuation of the property. This had not been requested by the Provider. In additional submissions the Complainants challenged the framing of this statement, noting that they had been advised by the Provider's Agent to seek a valuation. The Provider acknowledges that its procedure was not clearly outlined to the Complainants and, as a result, this oversight was included in its compensation offer.

The Provider says that on **9 April 2018**, further information was required by the mortgage lending team, and this was communicated to the broker. On **16 April 2018** the Complainants contacted the Provider to state that they were not happy with the Provider's mortgage adviser and requested a differed adviser to progress their application. During a call of **19 April 2018**, in which the first Complainant queried the status of the application, the Provider explained that *"their mortgage journey was more complex than was first envisaged"*.

The Provider says that on **20 April 2018**, the Complainants contacted the Provider to express concerns that the previous mortgage adviser had damaged their application. The first Complainant noted that his request to the previous adviser to see his application, had been refused. As a result of this, a complaint was raised with the Provider. In further submissions, the Complainants stated that they were shown by the branch manager that their thoughts were correct, but they could not be given a copy of the information. The Provider responds that a final response letter was issued on **25 April 2018**, which concluded that there was no evidence that the adviser damaged the Complainants' application. The branch manager had expressed to the Complainants that the adviser had strongly supported and recommended their mortgage application.

The Provider says that, on **23 April 2018**, the Complainants' mortgage application was declined because the Provider was not satisfied that the Complainants had sufficient repayment capacity. The Complainants state that they want to have the record of this expunged, as it is damaging. The Provider responded in its final response letter of **7 December 2018** that it could not delete the application *"decline"* from its records. It did not uphold the point that the Complainants' integrity and record had been damaged. It noted that the decline would not have any influence on the Complainants' current or future credit applications, either with the Provider or a third-party. The Complainants have argued that it has affected their future credit, as they were denied a top-up application in **2019**. The Provider refutes this contention and notes that the Complainants have the option to escalate this as a separate complaint.

Following the decline of the application, the Provider and the Complainants entered into correspondence regarding the decision and the appeals process. The Complainants' broker submitted a revised proposition for the application to be reviewed, and further information regarding the Complainants' salaries was required. The Provider sought for the second Complainant to cease taking parental leave, and to return to work on a full-time basis.

The Provider notes that the Complainants had complained about delays and service issues. On **20 July 2018**, the Provider offered the Complainants a gesture of €1,500 (one thousand, five hundred Euro) in recompense. Due to technical issues, the phone call of this date could not be supplied to this Office. The Complainants state that it is important that the call has not been provided, and they contend that this is an example of the Provider only releasing content that suits it. The Provider refuted this and explained the technical problem in greater detail in its additional submissions.

The Provider states that a letter of approval was issued to the Complainants on **18 June 2018**. The Provider requested further information from the Complainants and, following receipt, a letter of loan offer was sent to the Complainants on **23 July 2018**.

The Provider submits that the background to every mortgage application is unique. Additional complicating factors here are that the first Complainant is self-employed, and that this was a new build. The Provider notes that it did offer a goodwill gesture of €2,475 (two thousand, four hundred and seventy-five Euro) for the delays in the application process. However, on review it notes that the delays are attributable to both the Provider and the Complainants, and/or their representatives.

The Provider notes that the first Complainant has stated that he was an experienced mortgage application. The Provider advises that applications are assessed on individual merits, and that this was the first self-build mortgage application by the Complainants, which can require additional time and documentation to progress. In further submissions, the first Complainant contested this statement. He noted that he had previously taken out a mortgage for a self-build. The Provider responded that this prior mortgage was not categorised as a self-build.

The Provider was asked by this Office to furnish a copy of its policy and procedures relating to how the Provider processes mortgage loan applications. The Provider says that its Mortgage Lending Policy is internal policy, and it cannot be provided to this Office. The Provider states however that information regarding the documentation required, and time frame indicators are available on its website. In further submissions, the Complainants stated that this is an example of the Provider failing to answer incriminating questions. The Provider has refuted this.

The Provider maintains that there were some delays attributable to the Provider in the handling of the mortgage application. It is not satisfied that it met its own time frames relating to the process. The Provider notes its prior offer of €2,475 (two thousand, four hundred and seventy-five Euro).

/Cont'd...

The Provider states that, in relation to the broker's fees that are sought by the Complainant, the decision to engage a broker was the Complainants' own decision. It relies on a statement from its website which states that customers will pay for their own advisors' fees.

The Provider reviewed the conduct of its mortgage adviser in relation to a number of meetings held with the Complainants. It says that certain information was required by the Provider, and the Complainants had not been forthcoming with the information. The Provider submits that the information requested by the adviser during these meetings, was not excessive, and was necessary to progress the application. However, the Provider acknowledges that the Complainants were delayed by discussing these matters when they had not expected to do so. In further submissions the Complainants have challenged the contention that they were not forthcoming with information. The Provider relied on its submissions regarding the timeline of the correspondence.

The Provider acknowledges that the tone and dialogue used by the adviser on a number of occasions was not suitable. As result, the offer of €500 (five hundred Euro) was made to the Complainants. In further submissions, the Complainants stated that they are "very angry" about these interactions, due to the "bravado" of the adviser. The Complainants sought the recordings of these conversations, and the Provider responded that branch calls are not recorded.

The Provider notes that there were two occasions in which it should have logged a complaint, due to the Complainants contacting it to raise the issue of a data breach. The Provider acknowledges that it did not comply with its regulatory obligations in this regard. However, the Provider notes it did comply with its obligations following this oversight.

The Provider explains that its original offer of €1,500 (one thousand, five hundred Euro) to the Complainants broke down to €300 (three hundred Euro) for the valuations, €250 (two hundred and fifty Euro) for the data breach, €500 (five hundred Euro) for delays and inconvenience, and the remainder for the customer service issues. The Provider apologises for the discrepancies in the figures between this offer and the subsequent offer.

The Provider notes that an overdraft of €15,000 (fifteen thousand Euro) with 0% interest was provided to the Complainants to assist with the build. In error however, an interest rate was applied. To rectify this, the Provider made a credit to the Complainants' account to refund the interest and cover any additional interest that may have arisen.

The Provider states that it is not liable for the increase in construction costs that the Complainants contend took place during the period of delay. It submits that it has no influence over the labour market and cannot be held responsible for such. The Provider notes that, in addition to its goodwill offer, it provided an interest-free overdraft to the Complainants within five days of the Complainants' request on **25 July 2018**. This allowed the Complainants to purchase building materials in advance of drawing down the mortgage. The Provider says that the offer to pay the equivalent of the Complainants' rent

was a goodwill gesture, to acknowledge that the application process took longer than expected.

The Provider submits that, in relation to the quantity surveyor, it never asked the Complainants to seek a report detailing the rise in construction costs. As a result, it states that it is not liable for the costs of engaging the surveyor.

The Provider set out a detailed response to a question of this office, explaining why the mortgage application was originally declined. The Complainants responded to this in further submissions, noting that the application was “doomed to fail” due to the mortgage adviser’s biases. The Provider submits that it refutes this contention, and notes that this was not raised by the Complainants prior to these submissions.

The Provider also submitted that its revised offer of €3,500 (three thousand, five hundred Euro) was incorrect, and should have totalled €3,975 (three thousand, nine hundred and seventy-five Euro).

In **September 2020**, when responding to the formal investigation of this Office, the Provider said that it wished to make a fresh settlement offer to the Complainants, as a gesture of goodwill, and in full and final settlement of this dispute, of **€6,975** (six thousand, nine hundred and seventy-five Euro):

“€300 – to cover the two valuations carried out at the Complainants’ expense.

€250 – in recognition of [the data breach]

€500 – for delays and inconvenience.

€450- acknowledgement of the Complainants’ upset with how they were dealt with by the mortgage adviser.

€2,475 – three months’ rental costs at €825 per month

€2,000 – in recognition of the passage of time since the complaint was first raised and our breach of CPC in relation to our initial handling of this complaint in March 2018, which fell below our obligations to the Complainants.

€1,000 – in recognition of the Bank’s delay in submitting this response to the Complainants and the FSPO.”

The Complainants rejected this updated offer.

The Complaint for Adjudication

The complaint is that the Provider wrongfully mishandled the Complainants’ application for their mortgage loan, which caused delay to the approval of their loan application and thereby delayed the construction of their new home. This has resulted in the Complainants incurring additional costs.

The Complainants also say that the Provider failed to properly and adequately compensate them in respect of their additional costs, including increased construction costs, accommodation costs, and professional fees that they incurred, arising from the Provider’s

/Cont’d...

failures. They say that the level of customer service afforded by the Provider to them in the context of their loan application and subsequent engagement, fell below an acceptable standard. The Complainants have indicated that:

"I believe a figure needs to be put forward here by [the Provider] in order to bring this matter to an end".

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

I am conscious that the Provider has acknowledged its delay and failings in its customer service in its dealings with the Complainants. The remaining issues which arise are therefore whether the Provider is required to compensate the Complainants for the rise in construction costs and cost of professional fees, or whether its broader compensatory offer is adequate in the circumstances.

I note that the Complainants have submitted that they incurred inflated construction costs due to the 'negligence' of the Provider. It is important to note that this is a complaint to the FSPO about the Provider's suggested wrongdoing, not a civil claim to the Court for damages for negligence and breach of duty.

There is no provision in the Provider's contract that the Complainants rely on to recover these additional costs. Instead, they argue that the Provider caused a delay, and should be held liable for all expenses that flow from that delay.

/Cont'd...

I note that the Provider has a regulatory obligation to act with due skill, care, and diligence, in the best interests of its customers. Where that standard is not met, this Office may in appropriate circumstances, direct a compensatory payment. I am conscious however, that the Provider has acknowledged its delay and offered a form of compensation at an early stage of the complaint.

The offer of **€3,500** by the Provider in **August 2018**, months before the Complainants made their complaint to this Office (including €2,475 towards rent) was a goodwill gesture for the issue of delay, and not an acknowledgment of any direct liability for the Complainants' expenses.

I also note the Provider's submissions that the Complainants and their representatives contributed to the delay. The Complainants have not challenged the timeline of events as set out in the Provider's submissions, and I note that many of the interactions between the parties concerned the seeking of documentation and information from the Complainants. In those circumstances, I consider the offer of compensation made by the Provider in relation to the delay, to be adequate. I also note that, on the information provided, the compensation in relation to the customer service issues is adequate.

Regarding the specific professional fees sought by the Complainants from the Provider, there is no legal or contractual basis on which the Complainants seek to rely. I note that the Provider's website has a notice that specifically excludes liability for paying professional fees. I also note that there is no specific legal or contractual basis on which the Provider is liable for the increased cost of construction fees, and I am conscious that in the context of the delays which occurred, some of which the Provider was responsible for, the Provider moved to actively assist the Complainants in a very practical way, during this period, in providing an interest-free loan.

I am very conscious that every mortgage application is unique to itself and particularly for borrowings to fund self-builds, the approval process can take a period of time, which is longer than the applicants would desire. I accept however, within the timeline for this particular application, that the Provider has acknowledged where it has been responsible to the Complainants, for delay in the process.

I am also mindful that although the Complainants' application was at first declined, the parties were in a position to work together to meet the Provider's requirements as a result of which, ultimately, the facilities were approved so that the Complainants' plans could be progressed.

In the course of the adjudication of this complaint, I have noted that the Complainants are unhappy arising from the "*bravado*" of the mortgage advisor with whom they met. The precise content of the parties' interactions remains unclear, but I am conscious that the Provider has acknowledged that the "*tone and dialogue used*" by the mortgage advisor in question on a number of occasions was not suitable.

/Cont'd...

It remains unclear to me as to precisely how the Provider has established this, given that there are no audio recordings available of the meetings between the parties and telephone calls inbound or outbound to the branch, were not recorded. Be that as it may, I am conscious that the Provider has made the acknowledgment in question and included an element of compensation for this disappointing approach by its staff member to engaging with the Complainants.

In those circumstances, I do not accept that the Provider has any contractual responsibility to the Complainants for the additional expenses and fees which they have sought. Although the Provider's service and interactions to the Complainants in this matter have been disappointing, nevertheless, I note that since September 2020 (at the time when the Provider responded to the formal investigation of the complaint by this Office) a generous compensatory payment has been offered by the Provider to redress the issues which were raised by the Complainants in the complaint.

On the basis that this offer of **€6,975** remains open to the Complainants for acceptance, I do not consider it necessary or appropriate to make any further direction and rather, it will be a matter for the Complainants to engage directly with the Provider if they wish to accept that compensatory figure available to them, in order to conclude.

Accordingly, on the evidence available, this complaint is not upheld.

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)

6 April 2022

PUBLICATION

Complaints about the conduct of financial service providers

/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.

Complaints about the conduct of pension providers

Pursuant to *Section 62* of the *Financial Services and Pensions Ombudsman Act 2017*, the Financial Services and Pensions Ombudsman will **publish case studies** in relation to complaints concerning pension 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.