



<u>Decision Ref:</u>	2022-0292
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Personal Loan
<u>Conduct(s) complained of:</u>	Refusal to grant consumer credit Delayed or inadequate communication Dissatisfaction with customer service
<u>Outcome:</u>	Upheld

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

This complaint concerns the rejection of the Complainant's application for a personal loan by the Provider, which is a Credit Union.

The Complainant's Case

The Complainant says that in **2016**, some four years before making this complaint, she applied for a personal loan of **€8,000** (eight thousand Euro) with the Provider.

The Complainant states that she had a perfect credit record, with no outstanding loans, and that she held full time employment. The Complainant states that she was informed that she would not qualify for any loan, due to the bad credit record of a member of her household. The Complainant says that she and her partner had separate accounts and their finances had always been kept separate.

The Complainant submits that she complained to the Provider in writing and had an in-person meeting with an Agent of the Provider. The Complainant was informed that it was the Provider's policy to assess "*whole households*" when individuals applied for loans. The Complainant asked for a copy of this policy on a number of occasions, but this was denied. The Provider's decision was confirmed by its lending committee.

The Complainant states that the Provider:

"made it clear to me that I had no financial identity... to them I was merely an extension of my partner's financial past that had nothing to do with me."

The Complainant submits that the Provider labelled her as *'quite abusive'*, as she kept asking clear and simple questions about the loan refusal and the way that the process was handled. The Complainant states that the Provider's final decision left her with:

"no more self-esteem left, I felt humiliated and belittled, my mental health was suffering and my relationship was on the rocks. Eventually I started seeing a counsellor."

The Complainant explained in an email to the Provider of **17 March 2016** that she attended at the Provider's branch for a loan application. She was informed by the Provider's Agent (Agent A) that no decision would be made that day and she left the meeting room and sat in the general lobby of the branch to wait for her partner. The Complainant states that Agent A then called her back into the room. The Complainant states:

"[Agent A] said 'I'd like to tell you that you are not eligible for a loan with us'. I asked: 'What has the decision been based on?', [Agent A's] response was: 'On the information you provided today and on your outgoings'. My next question was: 'What outgoings? We haven't discussed my outgoings'. Her response: 'We cannot give you a loan'"

In response to the Provider's submissions to this Office, the Complainant made a number of further comments. The Complainant contests the Provider's statement that she advised the Agent A that she did not want her partner's details included in her application. The Complainant states that she did not make this request, and she simply provided all information requested of her. The Complainant notes that she was told about the possibility of having her partner's information included in her application and had no reason to ask for their details to be excluded.

The Complainant contests the Provider's claim that she was made aware of its policy in relation to household income and expenditure, during the application process. The Complainant queries how the Provider assessed her household situation when she was not asked for any details about her household. The Complainant's partner had not authorised access to his data. She reiterates that she was told by Agent A that her application was refused due to her outgoings, which hadn't been discussed. She was not informed by Agent A that it was due to her partner's credit history.

In response to the Provider's submission that the policy allows for an element of discretion to the underwriter for loans up to €5,000 (five thousand Euro), the Complainant submits that she asked Agent A how much she could borrow, and Agent A responded that she would not be eligible for any loan.

The Complainant states that the Provider's submission that her application coincided with a structural change as to how loan applications were processed, contradicts information provided by the Provider's CEOs. She states that the CEO informed her that several changes were implemented directly as a result of her complaint. The Complainant relies on correspondence from the Provider which noted that its policy was *"enhanced"* as a result of her feedback.

/Cont'd...

The Complainant submits that the treatment she received was not just or appropriate in the circumstances. She states:

“The negative decision was communicated so badly that I was left to my own devices to hunt for answers. I felt I was not worthy of an honest and direct response. My frustration was further exacerbated by the blank refusal to put me in contact with the Lending Manager who had made the decision. On the day in question I left [the Provider’s office] very upset, second guessing why I had been refused the loan.”

The Complainant submits that she has been discriminated against based on her personal choices: *“in my case who I share the house with”*. She submits that the Provider’s complaints process was additionally confusing, and that the Provider was not pro-active in explaining the procedure to her.

The Complainant states that, as a result of her meetings with the Provider’s Agents, she did not have the confidence to appeal her decision to the Provider’s Board of Directors. She states that she received the same scripted answers from the Provider’s Agents, and that she *“felt humiliated”* during the process. As a result, her mental health began to suffer.

The Provider’s Case

The Provider states that its credit policy is a set of guidelines, based on prudent lending criteria, which has been developed for use by its underwriters to determine whether a loan application should be granted or refused.

The Provider notes that sections 3.1.1 and 3.11.1 of the Central Bank of Ireland’s (‘CBI’) **Credit Union Handbook** additionally provide that the policy for determining the income of loan applications, and whether or not borrowers are connected, is a matter to be determined by the Provider, in each case.

The Provider notes that on **8 March 2016**, the Complainant’s partner applied for a car loan of €8,000 (eight thousand Euro). The Provider states that an Irish Credit Bureau (ICB) report was completed, and the loan was refused, based on his credit history.

The Provider says that subsequently, on **16 March 2016**, the Complainant attended at the Provider’s office to apply for a car loan of €8,000 (eight thousand Euro).

The Provider states that the Complainant *“wanted to apply for the loan based on her income/expenditure details alone and did not want any of her partners (sic) details included as part of the application.”* The Provider says it refused the loan, based on its policy to take account of all household income and commitments to debt.

The Provider explains that the majority of loan applications are assessed whilst the loan applicant is still in the Provider's branch. The Provider has an underwriter for each branch, and decisions could be referred to the Lending manager in the head office. In this situation, the Complainant had previously attended at the Provider's office in the role of a potential guarantor for her partner. After the Complainant left the interview room, Agent A contacted the Lending Teller and informed them that the Complainant wished for the loan to be based on her details alone. The Lending Manager refused the loan application, in line with the Provider's policy. As the Complainant was still in the Provider's branch, it says that Agent A advised her of the decision and of the ability to appeal to the Credit Committee.

The Provider states that '*household income*' is defined in its lending policy as the income of the applicant and, where appropriate, their spouse or partner. The Provider notes that the Complainant has never disputed that she and her partner share the same household; the Provider says it did not base its decision on an assumption. The Provider notes that underwriters do have an element of discretion in applying the policy for loans up to €5,000 (five thousand Euro). However, this discretion was not relevant in the Complainant's case.

The Provider was asked by this Office whether and how the Complainant was made aware of the Provider's policy. The Provider states that during this period, its members were not required to make appointments for loan applications. The member could attend at the branch and be seen on a first-come, first-served basis. The Provider submits that the Complainant was advised of its policy in relation to household income and expenditure, during this application process. It notes that the Complainant advised Agent A that she wanted to apply for the loan, based on her own income and expenditure details.

The Provider states that Agent A contacted the Lending Manager with this information, and the Lending Manager refused the loan "*as the policy of the [Provider] is to take account of all household income and all household commitments to debt before making a decision.*" It notes that "[b]ased on the information provided, the loan was refused." The Provider states that all standard internal procedures in place at the time, were followed.

The Provider states that it is not able to comment on the recorded reference to the Complainant being '*quite abusive*'. It states that people see interactions in different lights and it notes the period of time that has elapsed since the comment. The Provider states that some of the participants to the interaction have left the Provider, and consequently, it is unable to comment.

The Provider states that the Complainant's application coincided with a structural change as to how loan applications were processed. Following the Complainant's application, the Provider moved to a centralised underwriting structure, rather than an individual branch office underwriting loans.

The Provider says that since **May 2016**, the loan decisions are communicated by the underwriter, allowing for immediate explanation of the decision. Further, there is a time lapse between the application and the underwriting, "*therefore immediate decisions as in this case, do not occur.*"

/Cont'd...

The Provider submits that the Complainant has been treated in a fair manner, and in line with its policy. She was afforded the opportunity to speak in-person to the former CEO, and to the Credit Committee. The Provider says that the Complainant's case has been subsequently considered by the current CEO, the Complaints Committee and the full Board of Directors.

The Complaint for Adjudication

The complaint is that the Provider wrongfully and unfairly rejected the Complainant's personal loan account application in **2016**, based on her partner's credit record.

In her complaint form, when asked how she wishes for her complaint to be resolved, the Complainant states that she would:

"like to be financially compensated. I believe that it would be fair if I was awarded €8,000.00 euro, the amount of the original loan application plus interest, plus €4,000.00, the cost of over a year of counselling sessions"

Decision

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

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

A Preliminary Decision was issued to the parties on **5 August 2022**, outlining the preliminary determination of this office in relation to the complaint. The parties were advised on that date, that certain limited submissions could then be made within a period of 15 working days, and in the absence of such submissions from either or both of the parties, within that period, a Legally Binding Decision would be issued to the parties, on the same terms as the Preliminary Decision, in order to conclude the matter.

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

/Cont'd...

The Provider has referred to extracts of the **Credit Union Handbook**, which it describes as “*issued by the Central Bank - Lending*”.

The Provider has supplied details of these extracts, which state the following:

“3.11 Large exposures

The Regulations set a maximum large exposure limit in respect of the total permitted exposure to a borrower or a group of borrowers who are connected.

...

[Original underlining]

3.11.1 Connected borrowers

The Regulations contain requirements in relation to credit unions identifying groups of borrowers who are connected.

...

*The purpose of identifying groups of borrowers who are connected is to identify if it is likely that the financial problems of one borrower would cause difficulties for other borrowers in terms of full and timely repayment of a loan and as such whether those borrowers present a single or common risk to the credit union. Single or common risk will generally occur where the credit union considers there is **material** financial interdependence between borrowers (such economic dependence may be mutual or one way).*

...

The following is a non-exhaustive list of examples of potential connected borrowers. It is a matter for each credit union to determine, taking account of all of the individual circumstances, if such borrowers are connected:

...

- *The borrower and his/her spouse/partner if by **contractual arrangements** both are liable and the loan is **significant for both – in terms of potential impact on the ability of the spouse/partner to repay (it should be noted all spouses/partners would not automatically be presumed to be connected borrowers)**;*

...

[My underlining added for emphasis]

The assessment undertaken by the credit union to determine whether or not borrowers constitute a group of borrowers who are connected should be documented in writing.”

I note that the Provider points to its internal policy document from late **2015**, which stated as follows at page eight:

/Cont’d...

“Step 4 – Update Outgoing details for member, and where appropriate spouse/partner

...

- *Where we are taking the income of a spouse or partner, we should ask whether they have any personal loans or an [Provider] loan. If a spouse or partner has a [Provider] loan, we should ‘link’ the members as connected parties.”*

[my underlining added for emphasis]

It is clear in those circumstances that the provider’s written policy reflected that the income of a spouse or partner would not always be taken into account.

The policy document also sets out under the heading “*Loan Analysis and Decision Making*”, that:

“11.3 Connected Parties

The following should be considered as connected borrowers:

- (a) Two or more, natural or legal persons between whom there is no relationship of control but who are to be regarded as constituting a single risk because they are so interconnected that, if one of them were to experience financial problems, the other or all of the others would be likely to encounter repayment difficulties; or*
- (b) Where two or more, natural or legal persons are in a relationship of control the credit union should make an assessment as to whether those in the relationship of control should be regarded as single risk because they are so interconnected that if one of them were to experience financial problems, the other or all of the others would be likely to encounter repayment difficulties*

The total exposure of the Credit Union of connected party loans needs to be taken into account when assessing an individual loan application.”

This was followed on Page 16 with the following details:

“11.5 Analysis Methodology

Loans shall be for a productive or provident nature. We commit to our members to deal with them in an equitable and confidential manner. Individual applications will be judged on their own merits, with the Credit Union taking an objective and fair view.

The validated information on the application is analysed for the following:

- *Capacity to repay the loan*
- *History of the member and previous loan record with the credit union*
- *Personal Circumstances (Married/Single, dependents, age, mortgage or rent)*
- *The Net Disposal Income (NDI) – Total monthly Income minus Total Monthly Debt repayments, including the Credit Union loan repayment*
- *% of total debt repayment monthly to net monthly income (in most cases, this should not exceed 45%, including the credit union loan repayment). However, this % must be considered in conjunction with the NDI*
- *Repayment history of other debts from the Irish Credit Bureau*
- *Income Stability*
- *Loan purpose*
- *Exposure, including where appropriate a connected party, security or guarantor offered*
- *Any other reasons / conditions deemed necessary by the Board of Directors.”*

[my underling added for emphasis]

This complaint concerns the Complainant's loan application in early **2016**. The Provider states that its policy was to assess household income and expenditure when assessing applications for personal loans. I have reviewed the Provider's policy document, details of which are quoted above, and there is no reference to a policy to review the financial information of an applicant's 'household'. Instead, the policy document refers to the practice of identifying 'connected borrowers'.

It appears from the Provider's submissions to this Office, that its reference to 'household income' refers to this written policy. The Provider has relied on the CBI Handbook in this respect. The Handbook provides guidance as to how connected borrowers can be identified. This guidance is given in the context of the appropriate Regulations limiting the maximum exposure that can be permitted for connected borrowers. I am mindful however that the Handbook specifically notes that it should not be presumed that spouses/partners are connected borrowers, and states that the assessment of whether borrowers are connected, should be made in writing.

The Complainant's policy document from 2015, does not clearly follow this guidance. Although the guidance of page 15 of the policy document aligns with the Handbook, it appears that the Provider's de facto policy in 2016, was that spouses and partners who held loans with the Provider were automatically 'connected' as part of the application process, rather than being the subject of an assessment.

In relation to the Complainant's situation, the first issue to consider is whether she was informed of the Provider's policy. The Provider states that the Complainant was verbally informed of its policy to assess household income. The Complainant however states that she was not informed of this policy, and would not have applied at all, if she had known.

/Cont'd...

The Complainant also points out that the Provider did not ask her for “household” details and, in my opinion, this is borne out by the contents of the application form which has been submitted in evidence, which notes that the Complainant confirms her marital status as single, and only details concerning herself are supplied on the fact of the loan application.

Taking the Provider’s submission at its strongest, it says that it took ‘household income’ into account in considering loan applications. This does not however accurately reflect the Provider’s policy to determine whether borrowers are ‘connected’ and then having done so, to make a determination on individual loans, based on the wider exposure of the Provider. Consequently, I do not accept that the Provider accurately explained its policy to the Complainant or that the Provider’s policy was indeed appropriate, as there was no documented assessment in writing undertaken, as there ought to have been, to determine whether the Complainant and her partner “*constitute[d] a group of borrowers who [we]re connected*”.

The Provider states that its underwriter was informed that the Complainant wished to be assessed, on an individual basis. It notes that this went against its policy of considering household income and debt, and that “[b]ased on the information provided, the loan was refused.” It is unclear whether the Provider refused the loan on the basis that the Complainant did not apply in a manner that allowed her ‘household income’ to be assessed, or whether it was refused because the Provider had made a determination of her household income, on the basis that it knew who the Complainant’s partner was, even though such household details were not recorded on her application.

In either of these situations, the first step for the Provider was to determine whether the Complainant and her partner were correctly to be considered connected borrowers. In the first scenario, the Provider would have had to assess whether the Complainant was connected with any other individual, in order to determine what the ‘household income/expenditure’ was. If the Complainant stated that she wished to apply for a loan as an individual, and an assessment determined that she was not connected to any other borrower, then there would be no apparent basis for rejecting the loan, if she otherwise met the Provider’s lending criteria. It does not appear from the evidence that the Complainant refused to allow this determination take place, and I note that the Complainant states that she was not informed of the fact of, or the necessity for, the determination at all.

It is not however clear as to whether or how this step of determining whether the borrowers were connected, was taken by the Provider. Certainly, it was not documented, as required. The Provider notes that the Complainant does not dispute that her partner was a customer of the Provider. However, the relationship of spouse or partner does not automatically determine whether borrowers are connected, as per the Handbook guidance.

If the Provider did make this determination, it is also unclear as to how it gathered the required information for this assessment, given that it was not documented. For the purpose of considering whether the Provider conducted an assessment, I note the Complainant’s submissions that she did not provide information about her partner, and that she was not asked about her own outgoings, in her meeting with Agent A. Consequently, it is unclear how such an assessment could have been conducted.

/Cont’d...

If the Provider determined that the Complainant and her partner were connected borrowers, it is additionally unclear as to when this determination was made, by whom, and on what basis. No written record of the Provider's assessment was supplied in evidence to this Office, if indeed it was undertaken.

The Provider notes that it communicated its decision to the Complainant whilst she was still in the branch. The Provider did not suggest that Agent A explained the reasoning of the decision to the Complainant. This supports the Complainant's statement that she did not understand why her application had been rejected.

In my opinion, the Complainant was entitled to know the general reasoning behind the Provider's decision. An explanation of the Provider's decision may have allowed an opportunity for the Provider's policy to be explained accurately to the Complainant. On the evidence available, I do not consider that the Provider properly explained its decision to the Complainant.

In the above circumstances, and on the evidence available, I have formed the opinion that the Provider wrongfully and unfairly assessed the Complainant's personal loan application in **2016**. It does not appear that the Provider was acting in accordance with its written policy when making this decision, and the Provider failed to properly communicate both its policy, and the reasoning for its rejection of the loan application, to the Complainant. In my opinion, this administration by the Provider of the Complainant's loan application was unjust and unreasonable within the meaning of **Section 60(2)(b)** of the **Financial Services and Pensions Ombudsman Act 2017**. Therefore, I consider it appropriate to uphold the Complainant's complaint.

I am also concerned that the Provider has been unable to offer any explanation on its recorded reference to the Complainant being '*quite abusive*'. Its inability to explain why it holds such a record, in the absence of any understanding as to whether such a record was ever appropriate, is unacceptable, in my opinion. I am conscious of the Complainant's evidence that she asked, on a number of occasions, as to why she had not been granted the loan. Asking for an explanation, in my opinion, does not constitute conduct that is "*quite abusive*", and one can well understand why she felt the need to ask such a question, given that, as outlined above, the Provider failed to offer her any adequate reason as to why the loan application had been refused. Accordingly, an appropriate direction by this Office to the Provider, to rectify this aspect of the matter, is set out below.

I have also had regard to the Complainant's submissions as to how the Provider's conduct affected her and caused her considerable upset and inconvenience and how her multiple attempts to seek information on the Provider's policy were dismissed. I have taken account of these details in making my directions below.

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)**.
- Pursuant to **Section 60(4(d) 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 Complainant in the total amount of **€3,000** (three thousand Euros) within a period of 35 days of the nomination of account details by the Complainant 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.
- Pursuant to **Section 60(4(a))** of the **Financial Services and Pensions Ombudsman Act 2017**, I also direct the Respondent Provider to rectify its records by immediately removing any record it holds of the description of the Complainant being “*quite abusive*”.
- The Provider is also required to comply with **Section 60(8)(b)** of the **Financial Services and Pensions Ombudsman Act 2017**.

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



MARYROSE MCGOVERN
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN (ACTING)

29 August 2022

PUBLICATION

Complaints about the conduct of financial service providers

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.

/Cont'd...

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.

