



<u>Decision Ref:</u>	2022-0084
<u>Sector:</u>	Banking
<u>Product / Service:</u>	Loans
<u>Conduct(s) complained of:</u>	Refusals (banking) Delayed or inadequate communication Dissatisfaction with customer service Failure to process instructions in a timely manner
<u>Outcome:</u>	Rejected

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

This complaint concerns a commercial loan application. The Complainant is a Company which ceased trading in August 2019, represented by a director of the company, referred to below as the ‘the Complainant’.

The Complainant’s Case

The Complainant contends that the Company applied for a business loan of €250,000 in **February 2019**, meeting with the Provider at a named branch to discuss the application. He further contends that, at this meeting, the Provider “*put an incompetent person in front of me to process the loan*” and that he was told by this person, (referred to as “customer advisor” hereafter), that the application was “*only a formality*”.

The Complainant states that he left the Provider branch thinking that the funds would be available within two weeks. The Complainant further details interactions with the Provider, subsequent to this meeting, which he states were positive. The Complainant submits that the Company spent more than €5,000 (five thousand euro) with its accountants to ensure, amongst other things, the figures supplied were accurate.

The Complainant contends that over the following weeks, he contacted the customer advisor on several occasion, requesting updates, to which the customer advisor replied with “*put-offs*”. He further contends that he was contacted by another agent of the Provider, who queried certain elements of the Complainant’s business plan and asked him to submit an amended business proposal. The Complainant states that he submitted an amended proposal as requested, and that the Provider responded with a “*list of queries starting with why did I submit new figures*”.

The Complainant states that at this point the company was “*haemorrhaging money*”. He also states he requested a credit review, but was told that a refusal of his application was required in order to proceed with a review. The Complainant explains the impact of the Provider’s conduct, on the Company and him, including filing for bankruptcy and a negatively affected credit history.

The Provider’s Case

The Provider submits that the Complainant met with Mr S in early **February 2019**, and that they discussed “*finance options in relation to a business proposal [the Complainant] had*”. The Provider further submits that at a meeting, the parties agreed that a specific named loan scheme would be the best option.

The Provider contends that it received the Complainant’s business plan, projections and accounts and these were analysed in detail. The Provider submits that it required further information from the Complainant, and that the Provider’s business advisor (referred to below as the “*business advisor*”) and a branch manager telephoned the Complainant to discuss the matter. The Provider states that “*after a lengthy call*”, the Complainant decided to revise the projections and revert at a later date.

The Provider submits that it received the revised projections in early **March 2019**, and, after reviewing them, noted that the proposal “*had changed significantly*”. The Provider further submits that there were several issues that it needed to discuss with the Complainant, and that the customer advisor emailed the Complainant a list of the Provider’s queries on **7 March 2019**.

The Provider contends that the Complainant did not respond to the customer advisor’s email, and that the customer advisor assumed the Complainant no longer required the loan, or had secured finance elsewhere.

The Complaint for Adjudication

The complaint is that the Provider mismanaged the Complainant Company’s loan application, and proffered poor customer service from **2019** onwards, including poor communication and complaint handling.

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 Company 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.

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

It is helpful to examine the chronology of events:

7 January 2019 The Complainant telephoned the Provider's business team and requested an extension and increase for an overdraft facility for six months from €20,000 (twenty thousand euro) to €30,000 (thirty thousand euro). The Complainant explained that he was fitting out a production unit and cafe for his company and was awaiting money from investors but it was taking longer than expected. The Provider agreed to the overdraft increase and extension, which was sanctioned the same day. The Provider's agent also stated that overdrafts for €30,000 can only be permanent where there is €300,000 in the account in a financial year (so 10%), which was not the case for the Complainant. The Provider's agent from the business team explained that the overdraft would expire on **20 June 2019** and the Complainant should contact the Provider before that date if seeking a further extension. On the same day the Complainant attended one of the Provider's branches and signed the letter of sanction for the overdraft. This overdraft document, dated **7 January 2019**, has been submitted to this office and states that the overdraft limit was scheduled to reduce from €30,000 to €20,000 on **20 June 2019**.

6 February 2019 The Complainant had a meeting with the Provider's advisor at one of its branches to source finance for €250,000 (two hundred and fifty thousand euro) for the business. The Complainant met the criteria of the Strategic

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7 February 2019

Banking Corporation of Ireland (SBCI) and was therefore eligible to apply for a loan under the scheme because (i) the business was exposed to Brexit (ii) was a small or medium enterprise (iii) whose research and innovation costs represented at least 10% of the total operating costs in at least one of the last three years preceding the application to the SBCI or where there was no financial history as per the current financial statement. The Provider submits that it was agreed that the Complainant would be referred to the Brexit specialist staff based in the Provider's services department (hereafter referred to as the services team). The Complainant telephoned the Provider's business team and explained that he had dealt with the customer advisor who stated that he was required to contact the Brexit specialist team. The Complainant again set out that he was looking for a loan for €250,000 and gave details surrounding the reason for the loan, including that his business partner had a 33% share in the business. Though he indicated that he mentioned his business plan and costings to the customer advisor already, the Provider's agent stated that he would have to go through the "full assessment process". The Complainant stated that he was looking for a long term loan within three years, so that he could avail of the Brexit loan scheme. The Provider's agent outlined some options available, namely: (i) a business loan with a fixed rate of 6.95% (ii) a business loan with a variable interest rate of 5.50% (iii) SBCI Brexit loan with the maximum fixed interest rate of 4% with the term of 1-3 years. The Complainant stated that he would be proceeding with the Brexit loan option and the Provider's agent stated its Brexit loan team would be in contact with him in regard to this. The Complainant queried whether he could avail of a standard loan if the Brexit loan was refused, to which the Provider's agent responded that a full application assessment would again be undertaken. The Complainant also stated that he had an approved grant of €45,000 (forty five thousand) from the "local enterprise office" and he was owed €35,000 (thirty five thousand) rebate from Revenue. He also stated that his investor would be putting in €100,000 (one hundred thousand euro).

8 February 2019

After a Provider's agent was unable to contact a member of the Brexit loan team when the Complainant telephoned, later that day a member of the Brexit loan team telephoned the Complainant. During this conversation, a detailed discussion of the requirements for the Brexit loan was undertaken and the Provider's agent stated that it required a

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copy of the company's accounts. The Complainant stated that he was unable to have his accountant send final accounts pending a tax rebate matter, and the Provider stated that the draft accounts would do *"for the time being"* while the application was ongoing, and when the actual accounts came in *"we could have a look then"*. The Provider's agent and Complainant discussed certain deferment of payment in respect of the Brexit loan should the Complainant successfully secure same. The Provider's agent also stated that the Provider would look into the application, however, the application may be required to be progressed at the Provider's branch. He also stated that *"documentation wise...we have everything at the moment"* but that he would look into it and make sure *"we have everything"*. Near the end of the telephone call, the Provider's agent stated that a customer advisor or an agent from the Provider's branch would be in contact with the Complainant the following week.

On the same day, after assessing the application, a member of the Brexit team emailed the customer advisor in the Provider's branch stating that it was not proceeding with the management of the application, as the borrowing would take exposure, over the Provider's threshold.

11 February 2019

The Provider's customer advisor telephoned the Complainant and sent a further email with the small to medium enterprise lending application form.

14-22 February 2019

A series of email correspondences between the Complainant and the Provider's customer advisor wherein the Complainant sought an update as to the progress of his application.

22 February 2019

In the Provider's response email to the Complainant, it stated that *"it could not give a timeline on the application"* because each loan application is specific to customer's requirement. On the same day, the advisor spoke with the Provider's Brexit advisor about the application, because of the Brexit element. The Brexit advisor recommended that a separate business adviser of the Provider should provide guidance. The advisor raised a number of queries after assessing the application. Again, on the same day, the Provider's branch manager, business adviser and customer advisor telephoned the Complainant in order to seek more information and clarity about the Complainant's business. The Complainant during this telephone conversation stated

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that he would revise projections and revert to the customer advisor, when these figures were finalised. It is noted from this call that the branch manager did not inform the Complainant she was present.

4 March 2019

The Complainant emailed the customer advisor with a revised business plan and financials. He stated that he was not necessarily tied to the Brexit Loan option and asked that the first plan be disposed of due to errors because of the complexity involved. The email also requested that the customer advisor get back to him on what route should be taken and how long this would take.

The Provider has submitted that around this time new projections were analysed by the business advisor and customer advisor, and it was felt that more information was required, because the Complainant's proposal had significantly changed.

7 March 2019

The Provider emailed the Complainant stating that further information was required. This email contained detailed questions concerning the total outlay of the project, including further information regarding the 2019 cash flow projections, reasons why there had been no contracts in place, a projected balance sheet for the company over the next three years, the reason why the projected turnover had reduced from €1.03m (one million, thirty thousand euro) to €549,000 (five hundred and forty nine thousand) and clarification regarding how the business model had operated for the past number of years.

4 April 2019

Internal correspondence within the Provider regarding the requirement for the outstanding information from the Complainant.

21 June 2019

The Complainant telephoned the Provider's business team querying why the overdraft had reduced from €30,000 to €20,000 as he believed that this would only happen at the end of **June 2019**. The Provider's agent stated that the overdraft limit had reduced back on **20 June 2019** and stated that he could apply for a new overdraft. The Complainant sought a SBCI future business growth loan to which the Provider's agent stated that the Provider did offer such a loan but SBCI approval would be required. The Complainant also sought for an increase of his current loan with the Provider from €44,000 (forty four thousand euro) to €50,000 (fifty thousand euro) so his current account could be back

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in credit until the SBCI loan application progressed. The Provider's agent stated that a temporary overdraft could be provided but this would be difficult where there were seven unpaid direct debits on the current account from recent months. The Complainant outlined that his business partner had reduced his shareholding in the business and the Provider's agent stated that an application for a loan, to cover the overdraft would require trading accounts to be given to the Provider.

Later that day the Complainant telephoned the Provider's business team regarding starting an SBCI future business growth loan application. However, the Provider's agent stated that such loans would only be offered later in the year, as the Provider was awaiting confirmation on how much they would be allocated. The Complainant said that he had been advised in an earlier call to contact the Provider once he had sourced the SBCI eligibility code. The Provider's agent again stated that such a loan would only be offered in the last quarter of the year and apologised to the Complainant. The Complainant stated he required a loan at this time, not later in the year, and that he would apply to another financial institution instead.

28 June 2019

The Complainant telephoned the Provider's Business team requesting €50,000 for his business for the completion of his production unit, in particular for a bespoke machine he required. The Provider's agent, after submitting his application for an automatic decision, stated that it was declined, due to seven unpaid direct debits. The application was declined again when the Complainant sought a smaller amount. The Provider's agent stated that the Complainant could appeal the rejection, after the Complainant again referred to the reduction of his overdraft in **June 2019**. He also referred to a grant for €43,000 (forty three thousand euro) he stated he would receive, but only when he had sourced the machine required for his production. The Complainant referred to the Brexit Loan he had sought in the [Location 1] and [Location 2] branches of the Provider. After the Complainant mentioned that his accountant could talk to the Provider about the loan application, the Provider's agent stated she could leave the application on the system and contact the Complainant after his accountant had contacted the Provider. The Complainant stated he was unhappy with the Provider's system which he stated "*was not fit for purpose*".

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- 5 September 2019 The Complainant telephoned the Provider and sought its email address to make a complaint. The Complainant set out details of the complaint during this telephone conversation, which included detailed reference to his interactions with the Provider's agents. The Provider's agent on the phone stated the matter would have to be looked into and provided the email address for him to address his complaint to.
- 16 October 2019 The Complainant emailed the Provider's business team to complain.
- 17 October 2019 The Provider has submitted that the complaint was transferred to the Provider's customer care team for investigation.
- 22 October 2019 Letter of acknowledgment of complaint was sent to the Complainant.
- 24 October 2019 Provider complaints handler telephoned the Complainant. The Complainant stated that his business partner and he had met with the Provider's business advisor in the branch in February. The Complainant explained that he had a Brexit eligibility code and was applying for a €250,000 loan to build a café. He also referred to a business plan he had done up by another party which cost him €5,000. He added that the customer advisor of the Provider stated that the loan was just a "*formality*" and would be approved with no issue. The Complainant stated then it was referred to the business advisor who he spoke to during a telephone conversation a month later. The Complainant stated that he queried some of his financial figures and required further information. The Complainant during this telephone call asserted that he had requested a meeting with the business advisor, but the Provider has submitted that the business advisor "*did not recall this request*".
- The Complainant further stated that he sent his business plan again to the Provider after the telephone call with the business advisor, with the revised figures, however, he did not get any reply. He also asserted that his business product "*was good*" and there were contracts in place. He stated that he had stopped plans to build the café and wished to secure finance for his "*production plant*". He complained that he was unhappy with the way his application was dealt with and that he never received a formal decline.

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31 January 2020

Final response letter issued.

I note that in the email of **16 October 2019**, the Complainant set out again that he and his business partner made an appointment with the Provider in early **February 2019**. He states that during this meeting he discussed with the Provider the company's financial requirements and the potential of the business. He says that he brought a business plan with more than 30 detailed pages, including cash flow projections which had taken more than two months to prepare. He said that it was agreed during this meeting that the Brexit loan scheme would be the best option because "*he already had eligibility*". He says that the Provider's agent told him that "*it's a "formality" there's no security needed you have from the outset here a huge amount of backup to prove predicted financials.*"

The **16 October 2019** email stated how the Complainant was advised that the customer advisor would send the application to the Brexit team and he would contact the Complainant for further information. He said he was very pleased with the agent from the Provider's Brexit team when they had called him because they went through the plan for over an hour, during the telephone conversation and the Brexit team agent expressed a very positive view. He said it was at that stage that "*everything stopped*". When he tried to contact the customer advisor who had been involved in the early **February 2019** meeting, to seek an update, he was told "*how much work it was*".

The Complainant stated he spoke with and Provider's agent, who described herself as a "*business manager*", and stated that the Complainant's projections "*were mad and I should reduce everything to get it done*". The Complainant, therefore, re-submitted the information again. He stated that the customer advisor again sent him an email for further information, and queried why he had reduced his projections. He said at this point he gave up because it was "*turning into a farce*", adding that he still had not gotten a refusal for the application and the business had shutdown.

The email goes on to state that the Complainant and his wife had worked five years in total on the business and had invested €400,000 (four hundred thousand euro) with debts of over €150,000 (one hundred and fifty thousand euro) built up, because of the Provider's "*inability to support small businesses*". He stated that they had sleepless nights and the way they were treated was disgusting to say the least, adding that they feared they were facing bankruptcy and pointed out that the inability to get credit, would affect their future ability to purchase a home.

In the final response letter dated **31 January 2020**, the Provider referred to the telephone call of **24 October 2019** when the Complainant had outlined some of the issues of his complaint. The letter made reference to the meeting between the customer advisor and the Complainant in early February 2019 in the Provider's [Location 1] branch, when it was agreed that the best option available to the Complainant would be the Brexit loan scheme.

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The letter outlined that during the telephone call of **20 February 2019**, which followed the Provider's receipt of the Complainant's business plan projections and accounts, the Provider's business advisor and branch manager spoke with the Complainant. The Provider stated that, following this call, the Complainant stated he would revise his project projections and revert.

The Provider stated that when it received the new projections at the beginning of **March 2019**, this raised several issues which required discussion. As a result, the Provider's customer advisor emailed the Complainant a list of queries on **7 March 2019**. The Provider stated that, following an investigation by the Provider, it was satisfied that its customer advisor provided the service levels which it aims to achieve.

The Complainant says that following the meeting on **6 February 2019**, he provided information to the customer advisor which included a completed "SME Business Lending Application Form", directors' report, directors' responsibility statement, accountants report, profit and loss account, balance sheet, statement of changes in equity and notes to the financial statements. He further submitted that following correspondence throughout **February**, he was not satisfied because he could not be provided with a timeline as to how long the loan application would take. He said this was a particular concern because cash flow becomes a problem over a longer timeline for such applications. He also submitted that the Provider ignored his request for information on the status of his application.

The Complainant says that the information sought in the Provider's email of **7 March 2019** was in areas which had already been clarified within the documentation provided to the bank prior to that email. The Complainant also made reference to some typographical errors in the Provider's correspondence. Regarding the telephone conversation of **22 February 2019**, the Complainant submitted that only the business adviser and customer advisor were present during the call and the bank manager was not, as stated by the Provider. I note the Provider's submission in this regard (which was rejected by the Complainant), where it stated that the branch manager was present on the call, but had not spoken or identified herself. The Complainant described the experience on **21 June 2019**, regarding his application for an SBCI, as entailing "*conflicting information*" offered by the same Provider on the same day, which led to frustration and confusion.

Analysis

I note the Provider's submission that there was still outstanding information required by the Provider in order to progress the Complainant's application, as evidenced by the email dated **7 March 2019**. I also note the Complainant's email **4 March 2019** which stated "*I would suggest disposing of the first plan as, on reflection, it has a few errors that were missed as it was so complex*".

I am satisfied from the evidence available that during the various conversations leading up to the email of **7 March 2014**, at no stage was it communicated to the Complainant that his application process was complete and he would be given a decision. I note that the Complainant has submitted that the customer advisor of the Provider stated on **6 February 2019** that the loan application was just a "*formality*" and would be approved with no issue.

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This assertion is made in relation to a meeting at the Provider's branch. There is no audio recording available, and the Provider has denied this was ever stated. In my opinion, there is insufficient evidence available to accept the Complainant's assertion that he was given this information, in response to him seeking the loan of €250,000, to be repaid over a period of 3 years, and I am conscious that such a suggestion is entirely in conflict with the "full assessment process" referred to during the telephone call on 7 February 2019.

I further note that **7 March 2019** saw the last email from the Provider to the Complainant regarding the Brexit loan application where it sought certain financial documentation. I accept that, because the Complainant did not provide any of this documentation or contact the Provider until late **June 2019** by telephone, regarding a separate loan application (some three months later), the Brexit loan application had not reached decision stage and the application remained incomplete, because the Complainant never provided the financial documentation sought, nor did he provide an updated business plan.

The Complainant has submitted that he was subject to delays by the Provider. I note that the Complainant had sent a series of emails in **February 2019** seeking an update in respect of his loan application. I note that it was not until **22 February 2019**, that he received a telephone phone call from the Provider's agents, when the loan was discussed in detail and further documentation was sought. I note that the Provider's guide to applying for business finance states that "*Depending on the size of your loan or the complexity of your business it may take up to 15 days to reach a decision on your application. In these cases we will keep you updated on progress*". However, this timeline only applies once all the relevant documentation is in place, which I note was not the case for the Complainant's application.

I am satisfied on the evidence, that there was no undue delay. The Complainant himself has stated that this application contained complex financials and, therefore, I do not accept that the Provider was delaying by seeking further documentation and by being thorough in its review of the loan application for this significant amount.

The Central Bank (Supervision and Enforcement) Act 2013 (Section 48) (Lending to Small and Medium-Sized Enterprises) Regulations 2015 (the 2015 Regulations) states at Regulation 14:

"Applications for credit

14. (1) A regulated entity shall publish on its website, and otherwise make available to borrowers in any office of the regulated entity dealing with lending subject to these Regulations, the following information:

(a) that the borrower is entitled to request a meeting with the regulated entity to discuss any proposed application for credit;

(b) the timelines which apply to the assessment of an application for credit as set out in the regulated entity's policies and procedures;

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(c) the information that may be required from a borrower in support of a borrower's application for credit;

(d) that the regulated entity may require submission of a business plan in support of an application for credit;

(e) a description of the information that may be required in a business plan, including information on the structure and content of the business plan;

(f) information about Government support schemes available from or through the regulated entity;

(g) a statement confirming whether a refused application for credit will result in a negative impact on the borrower's credit rating;

(h) a description of the regulated entity's policies on security.

(2) A regulated entity shall acknowledge receipt of an application for credit, in a durable medium, within 5 working days of receipt of the application.

(3) Prior to entering into a credit facility agreement, a regulated entity shall gather and record sufficient information from the borrower to assess whether that credit is suitable to that borrower and the level of information gathered shall be—

(a) appropriate to the nature and complexity of the credit facility agreement being sought by the borrower, and

(b) to a level that allows the regulated entity to assess the borrower's likely ability to repay the debt over the duration of the agreement.

(4) The regulated entity shall offer a credit facility agreement to a borrower only where it has satisfied itself on reasonable grounds that—

(a) the credit is suitable to that borrower, and

(b) the borrower will likely be able to repay the debt over the duration of the credit facility agreement.

(5) Regulations 14(3)(a) and 14(4)(a) shall not apply where the borrower is—

(a) a person or group of persons, but not an incorporated body with an annual turnover in excess of €3 million in the previous financial year (for the avoidance of doubt a group of persons includes partnerships and other unincorporated bodies such as clubs, charities and trusts, not consisting entirely of bodies corporate), or

(b) an incorporated body having an annual turnover of €3 million or less in the previous financial year (provided that such body shall not be a member of a group of companies having a combined turnover greater than the said €3 million).

(6) Without prejudice to paragraph (5), a regulated entity shall comply with paragraphs (3) and (4) prior to advancing additional credit to a borrower.

(7) If a regulated entity cannot make a decision within 15 working days of receipt of a completed application on whether it will grant or refuse an application for credit, the regulated entity shall inform the borrower, in a durable medium, of the reasons why the regulated entity's assessment of the application will take longer than 15 working days and the expected timeframe within which a decision will be made.

(8) Where the reason that the regulated entity cannot make a decision within 15 working days is that the regulated entity requires further information, the regulated entity shall inform the borrower, in a durable medium, of the information that it requires and the timeframe within which the information should be provided.

(9) A regulated entity shall inform the borrower, in a durable medium, whether the application for credit has been approved or refused."

Although the Provider's agent, when emailing the Complainant in **February 2019**, did not indicate a timeline, I note that the email of **14 February 2019** from the Complainant stated that there were still outstanding accounts which he required from his accountant (which he sent the Provider on **20 February 2019**). Though this application process was being processed in a piecemeal fashion (in part because the Complainant was still providing documentation right up until **20 February 2019**), in light of the emails of **4 March 2019** and **7 March 2019** I do not accept that there was a 15-day timeline requirement in the circumstances, because the application had not been formally submitted. Accordingly, I am satisfied that there was no breach of Regulation 14 (7), (8) or (9) of the 2014 Regulations.

Despite the absence of a formal application being submitted for a formal decision (because of the outstanding documentation) I believe that the Provider should have followed up with the Complainant after its email of **7 March 2019**. The Provider has stated in its submission to this office:

"the Bank acknowledges that a further email or telephone call should have been made to the Complainant following the Bank's email of 7 March 2019 to check if the Complainant was still intending to proceed with the application and we apologise that this follow up did not occur."

Provision 2.1 of the Consumer Protection Code (CPC 2012) states that the Provider must act "*honestly, fairly and professionally in the best interests of its customers and the integrity of the market*" and under section 2.2 act "*with due skill, care and diligence in the best interests of its customer*".

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In my opinion, the Provider did not comply with its obligations under provisions 2.1 and 2.2 of the CPC 2012, in failing to follow up with the Complainant.

I note that during the telephone call with the Complainant on **21 June 2019** the Provider's agent had stated that the application could be processed for the Complainant once he had gotten the SBCI future business growth loan. This information was incorrect, and the bank has clarified to this Office as follows:

"Having got [sic] SBCI eligibility the Complainant phoned later that same day and another staff member explained that the bank were not taking the future business growth loan applications at that time. The Bank notes that the information provided by the staff member on the first telephone call was incorrect and the Bank apologises for this. The Bank notes that during a second conversation with the Complainant later that same day, a different staff member clarified the position and provided the correct information. We would like to take this opportunity to apologise for any confusion caused to the Complainant in this regard, as the Bank was not offering the future business growth loans, until 10 November 2019."

Provision 5.17 of the CPC 2012 states that "A regulated entity must ensure that any product or service offered to a consumer is suitable to that consumer, having regard to the facts disclosed by the consumer and other relevant facts about that consumer of which the regulated entity is aware." Under Provision 4.1 of the CPC 2012, "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."

In my opinion, the evidence shows that the Provider did not comply with Provision 4.1 and 5.17 during the first telephone call of **21 June 2019**.

I note from the Provider's policy regarding loan applications, that when a customer has an SBCI Brexit loan code, the customer is referred to the SBCI support team of the Provider. The Provider also stated that its customer advisor and business advisor, process all applications for the scheme, where the Net Connected Exposure (NCE) of the customer is in excess of €300,000 (three hundred thousand euro). For the Complainant's loan application, the Provider's customer advisor referred the Complainant to the Provider's direct business team on **6 February 2019**, however it noted that two days later on **8 February 2019** the Complainant was referred back to the customer advisor in the Provider's branch to proceed with the application. It seems that this was because facilities of €250,000, would have brought overall exposure above €300,000. The Provider stated:

"As the Complainant's loan application had a NCE in excess of €300,000 he should not have been referred to the Bank's Direct Business Team and for this we apologise."

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The Provider submitted that this error did not cause delays to the loan application as *“any information that was collated during this period by the Bank’s Direct team was forwarded to the [business advisor] in order for him to continue progressing the application.”*

The Provider acknowledges that:

“In reviewing this complaint and preparing this submission, the Bank acknowledges that there were service failures in relation to poor and unclear communication with the Complainant.”

I note the Provider’s submission that the branch manager was present during the telephone call of **22 February 2019**, but did not speak or identify herself. This was a crucial telephone call which discussed the loan application in great detail. I am satisfied that Provision 3.44 of the CPC does not merely extend to one person on any given telephone call, but required that all Provider’s agents on such calls, identify themselves. What is more, in the Final Response letter regarding the **22 February 2019** telephone call it stated *“Ms [redacted] Branch Manager, phoned you to discuss same”*, therefore, her presence on the telephone call was specifically relied upon by the Provider, despite never informing the Complainant of her presence. This is very disappointing, given that she was a senior person involved in the loan application.

I note that in its submission to this Office on **8 June 2021**, the Provider stated:

*“By way of background, the Bank wishes to advise that while the branch manager did not speak with the Complainant, she was part of the telephone call of **22 February 2019**, she was sitting next to the Business Advisor (BA) and the phone was on speaker. In light of this we have removed the branch manager’s file note from schedule of evidence... the Bank wishes to apologise for not notifying the Complainant of the staff members in attendance on the telephone call.”*

I note this explanation finally clarified the position, some 30 months after the telephone call.

On the basis of the evidence before me, I am satisfied that apart from some small errors on the Provider’s part in the management of the loan process, there is no adequate evidence before me upon which I consider it appropriate to uphold the complaint that the Provider mis-managed the Complainant Company’s loan application to any significant degree.

I am satisfied on the evidence that the Complainant did not submit all of the information which was required by the Provider in order to proceed with the assessment of the loan application, and it was the absence of this documentation which delayed the matter.

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It is however, disappointing that at a time when the Complainant was seeking to progress the loan application expeditiously, there was considerable misunderstanding regarding his options and, in my opinion, bearing in mind that the Provider was not offering “future business growth loans” until 10 November 2019, the introduction of this option as a possibility was inappropriate for the Complainant Company, which was not in a position to wait until close to year end.

I note that the complaint was made on **16 October 2019**. The Provider sent out update letters regarding the investigation on **5 November 2019, 29 November 2019, 23 December 2019**, and a final response on **31 January 2020**. Accordingly, I am satisfied that the Provider processed the complaint correctly under the CPC 2012.

Redress offer

I note the following submission from the Provider in February 2021:

“In recognition of the service failings identified by the Bank in this submission and recognising the passage of time and effort taken by the Complaint to pursue this complaint, the Bank would like to offer a goodwill gesture of €2,500.00 to the Complainant in full and final settlement of this dispute.”

On the basis of the evidence before me, for the reasons outlined above, it is clear that there were some miscommunications from the Provider which led to confusion for the Complainant, in his efforts to secure the funding required for the Complainant Company. I am satisfied however, that in the Provider’s response to this complaint in **February 2021**, it offered what I consider to be a reasonable compensatory figure, in recognition of those errors. On the basis that this offer remains open to the Complainant Company for acceptance, I do not consider that it is appropriate to make any further direction in this matter and instead, it will be a matter for the Complainant Company through its director, to engage in communication directly with the Provider if it seeks to accept the compensatory offer in question. Accordingly, for the reasons outlined above, 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)

8 March 2022

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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.

