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| <b><u>Decision Ref:</u></b>             | 2019-0211                    |
| <b><u>Sector:</u></b>                   | Banking                      |
| <b><u>Product / Service:</u></b>        | Lending                      |
| <b><u>Conduct(s) complained of:</u></b> | Application of interest rate |
| <b><u>Outcome:</u></b>                  | Rejected                     |

**LEGALLY BINDING DECISION  
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

**Background**

This complaint concerns the Complainant Company's loan, held with the Provider.

The Complainant Company entered into a loan agreement with the Provider in **2005**. A new loan, in the form of a restructure agreement was entered into by the Complainant Company in **2010**, and this had a two year term. This loan was restructured again, in **2013** for a two year term. The Provider sold the Complainant Company's loan to a third party provider in April **2015**.

The Complainant submits that it was its understanding, based on representations which were made to the Complainant Company's directors by an Agent of the Provider, in **2010** and **2013**, that the facility would be renewed at the expiry of each two year term, until the loan was cleared.

**The Complainant's Case**

The Complainant Company submits that it entered into a loan agreement with the Provider in **2010** and that this agreement was based on a 12 year repayment schedule, by way of 24 consecutive monthly instalments.

The Complainant Company submits that it asked the Relationship Manager which it was dealing with at the time, Mr C., why the agreement was stated to be for 24 months, rather than the "full period" and that he assured them that the loan had been set up like that "*for review purposes only*" and that the agreement would be renewed every 2 years, with the same interest rate until the entire loan was repaid.

The Directors of the Complainant Company submit that the loan facility was renewed by the Provider, until **09 February 2015**, "*when [the Provider] did not renew the agreement*" and "*tried to withdraw the full loan amount of €75,969.66 which we did not have the funds to cover*".

The Complainant Company submits that it, at all times, honoured all of its agreements with the Provider and never missed a repayment until **09 February 2015**.

The Complainant Company submits that during 2015 the loan was sold by the Provider to a third party provider.

The Complainant Company submits that the Provider sold the loan without informing the third party provider purchaser of the reassurances which they had been given by the Relationship Manager, on behalf of the Provider in relation to their loan. The Complainant Company submits that it also feels victimised, as the loan was performing, but it was nevertheless sold to a third party provider which is unwilling to refinance the loan "*over a period of years*".

### **The Provider's Case**

The Provider notes that the Complainant Company is unhappy that the facility sanctioned in **2010** was only for a two year period. It notes that the Complainant Company believed that there was an agreement from the Provider that the facility would be renewed at the expiry of the two year term and renewed again every two years until the loan cleared. The Provider submits that it does not agree that any indication was given to the Complainant Company that the loan would be automatically renewed again every two years until the loan had cleared.

The Provider submits that on **08 Jul 2005** a facility letter issued to the Complainant Company in the sum of €265,000, which provided that the loan was to be repaid in full after 5 years, from the sale of certain properties. The Provider submits that interest only repayments were to be met by the Complainant during the term of the loan. The Provider submits that on **18 May 2009**, it agreed to the release of collateral held over a property held by the Complainant Company, on the basis that it reduced its borrowing by €100,000.

The Provider submits that on **10 Dec 2010** it processed the Complainant Company's credit application to extend the, expired, **2005** facility for a further two years. The Provider submits that this 2 year extension of €125,000 was approved, with a 12 year repayment profile, on the basis that the margin was increased from 0.75% to 1.5% with the Complainant Company making an immediate capital reduction of €40,000. The Provider submits that the

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Complainant Company had agreed to sell the secured property to clear the loan in full, however the sale of the property fell through during the Summer of 2010.

The Provider submits that a new facility letter was issued to the Complainant Company on **14 December 2010**, to restructure the existing facilities over a 2 year term, with a 12 year repayment schedule. The Provider submits that the terms applicable to this loan are clearly set out in the facility letter which was signed by the Directors of Complainant Company.

The Provider submits that on **07 Jan 2013** the Complainant Company looked for extension of the facility. The Provider submits that it agreed a reduced interest rate of Prime + 2% over a period of 2 years with a 9 year repayment profile, based on an immediate capital reduction of €15,000. It submits that the terms applicable to this loan are clearly set out in the facility letter dated **15 January 2013**.

The Provider submits that on **07 Apr 2015** it processed an application to restructure the facility at a margin of 4.5% over 6 years. It says that approval was given on **29 April 2015** to restructure the facility over 6 years, but at a margin of 7.5%. It states that a third party provider made this decision, on the basis that on **16 Apr 2015** this third party provider took over the ownership of the loan, as the Provider had sold the loan on the **16 April 2015**.

The Provider submits that on **06 Nov 2015** a complaint was received from the Complainant Company and on **16 December 2015** it issued a final response to the Complainant Company. The Provider refutes the Complainant's assertion that the Complainant's Relationship Manager, who is now retired, gave assurances in **2010** and **2013** that the loan would be renewed every two years until it was repaid.

The Provider submits that both the decision to grant or otherwise and the terms of any restructure or extension of credit facilities rests with its Credit Department.

The Provider submits that the maximum loan term made available to property loan restructures at that time, was 1 to 2 years. It submits that the credit applications made on the Complainant's behalf in **December 2010** and again in **2013** reflected this situation.

The Provider submits that whilst it was its intention, prior to expiration of the loan, that it would discuss terms for a potential further extension and/or restructure of this facility, based on an acceptable repayment strategy being agreed in the context of the prevailing credit policy that existed at that time, it never gave any commitment to the Complainants in this regard. The Provider submits that it reserved the right at all times to demand full repayment of the loan facility pursuant to the terms and conditions set out in the facility letters.

The Provider submits that the Complainant's loans were transferred to a third party provider on **16 April 2015** and that it no longer has any access to view the current status of the account.

### **The Complaint for Adjudication**

The Complainant Company's complaint is that in February 2015, the Provider acted wrongfully and/or unreasonably in not continuing to renew the facility agreement which it had in place with the Complainant as it had agreed to do, every two years until the loan was cleared. Instead the Provider ultimately sold the loan to a third party provider which was not made aware of the Provider's agreement to so renew.

### **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 14 June 2019, 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.

The Complainant is a limited liability company.

I note that the Complainants' original loan facility was drawn down in **2005**, bearing account number ending **-7183** and that a new loan, account number ending **-6657** in the form of a restructure agreement entered into, and was drawn down by the Complainant Company on 30 December **2010**. This loan **-6657** was restructured again, in **2013**.

The Complainant has submitted that when its Directors asked the Relationship Manager at the time, "*why the loan agreement was not for the full loan term*" it was given assurances

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by him that the agreement was for a shorter period for review purposes only, and would be renewed at the end of each period.

The Loan Agreements

I have had regard to the facility letter dated **08 July 2005** which provides that the term loan was in the amount of €265,000, with the stated purpose being to assist in the purchase of two named properties.

The facility letter provided that: *“The Term Loan will be repaid by 60 consecutive interest only instalments commencing one month from date of initial drawdown...The loan is to be repaid in full by 31<sup>st</sup> July 2010 from sale of properties or from the Company’s own resources.”*

This was also restated within the Special Conditions attaching to the loan, which provided that *“Loan to be fully repaid by 31<sup>st</sup> July 2010.”*

This did not occur and the Complainant sought, and was granted, a further term loan by the Provider in **December 2010**.

I note that the Credit Application submitted for approval by the Complainant Company’s Relationship Manger at that time, requested a €125,000 variable rate business loan with a *“repayment profile of 144 months to apply with a review after year 2.”*

The Reply in respect of the application stated it was approved, subject to conditions and that the *“New term is capital and interest (based on a 12 year repayment profile) with a 2 year legal commitment. Facility is expected to be repaid in full prior to expiry”*.

The facility letter dated **14 December 2010** and signed by the Complainant’s Directors on **23 December 2010** provided that the Loan Agreement was in the amount of €125,000, with the stated purpose being to *“restructure existing loan account -7183”*

The Repayment details included the following:

*“The loan shall be repaid by way of 24 consecutive monthly instalments to include capital and interest, commencing one month from the date of initial drawdown hereunder.*

...

*The repayment profile of the Loan will be based on a 12 year repayment schedule. This means that the Borrower will have lower repayment instalments than the Borrower would have had if the repayment of the Loan was based on a repayment profile equivalent to the intended term of the Loan **but all outstanding amounts will still fall to be paid by the Borrower along with the Borrower’s last repayment instalment.** The Borrower’s repayment obligations hereunder shall expire upon the date of the last repayment instalment along with all capital and interest then outstanding. **Sometime prior to the intended repayment date the Bank would propose to meet with the Borrower to consider the Borrower’s financial position and requirements at that time but the Bank offers no assurance and gives no representation that any further loan monies or other credit will be offered to the Borrower by the Bank whether at that time, previous thereto or thereafter.***

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...

*The amount of the initial instalment will be determined by the bank at the time of drawdown and thereafter the amount of the monthly instalment will be reviewed periodically at the Bank's discretion and adjusted as necessary in light of the prevailing interest **rates to ensure that the Loan is repaid in full within the agreed term of 2 years.***

*[my emphasis]*

The final page of the document is headed "Acceptance and Certification by Borrower" and underneath a box appears, which contains the following, in bold, capitalised writing:

WARNING- THIS IS AN IMPORTANT LEGAL DOCUMENT AND YOU ARE STRONGLY ADVISED TO SEEK INDEPENDENT LEGAL ADVICE BEFORE YOU SIGN YOUR ACCEPTANCE. BY ACCEPTING THIS AGREEMENT, YOU ARE DEEMED TO HAVE RECEIVED, READ, UNDERSTOOD AND AGREED TO BE BOUND BY THE TERMS AND CONDITIONS FOR BUSINESS FACILITIES REFERRED TO ON PAGE 1 OF THIS FACILITY LETTER, AND BY THIS FACILITY LETTER.

It was signed on behalf of the company, by each of the directors, and dated **23 December 2010**.

Subsequently, a further Credit Application Form dated **07 January 2013**, described as an "Application for Change of payment account -6657", was submitted to the Provider for consideration by the Complainant Company's Relationship Manager.

At page 12 of the application, the Relationship Manager set out the background to the application as follows:

*"[Company] registered in [Location] who own 2 residential properties at [location] and [location]. Loan was restructured 2 years ago with a 40k once off reduction applied. At that time customers were considering selling the house in [location] as Rental market fell away. The property was on the market for sale but they managed to obtain a long term tenant and they took it off the market and it has been rented ever since.*

*The "Amount and Purpose" was "Loan originally granted in Jan 201[sic] with a 12 year repayment profile with a review after two years. Renewal of existing Arrangement requested. Repayments will be 1,054 per month over 12 years with a review after 2 years. Proposed Expiry date 18/1/2015.*

A further, amended application, dated **11 January 2013** by the Relationship Manager stated:

*Approval 7/1/13 amended to terms as follows:*

- *Loan amount 93,875 (15k to be lodged upfront in permanent reduction)*
- *9 year repayment profile*
- *2 year legal commitment*
- *Pricing is Prime +2%*
- *Updated SAL to be provided for Guarantors as Condition Precedent.*

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The Facility Letter, which subsequently issued to the Complainant, dated **15 January 2013** stated that the amount of the loan was €93,875.06. The stated purpose of the loan was “*To extend existing loan account number -6657*”, and the “Repayment Details” included the following:

*The loan shall be repaid by way of 24 consecutive monthly instalments to include capital and interest, commencing one month from the date of initial drawdown hereunder. The Payment of the last such instalment shall include an additional amount equal to the balance of any and all unpaid capital and interest outstanding at that time.*

...

*The repayment profile of the Loan will be based on a **9 year repayment schedule**. This means that the Borrower will have lower repayment instalments than the borrower would have had if the repayment of the loan was based on a repayment profile equivalent to the intended term of the Loan but **all outstanding amounts will still fall to be paid by the Borrower along with the Borrower’s last repayment instalment...Sometime prior to the intended final repayment date the Bank would propose to meet with the Borrower to consider the Borrower’s financial position and requirements at that time but the Bank offers no assurance and gives no representation that any further loan monies or other credit will be offered to the Borrower by the Bank whether at that time, previous thereto or thereafter.***

*...The amount of the initial instalment will be determined by the Bank at the time of drawdown and thereafter the amount of the monthly instalment will be reviewed periodically at the Bank’s discretion and adjusted as necessary in light of the prevailing interest rates **to ensure that the loan is repaid in full within the agreed term of 24 months.***

*[my emphasis]*

Again, on the final page, headed ACCEPTANCE AND CERTIFICATION BY BORROWER, a warning box provided:

WARNING- THIS IS AN IMPORTANT LEGAL DOCUMENT AND YOU ARE STRONGLY ADVISED TO SEEK INDEPENDENT LEGAL ADVICE BEFORE YOU SIGN YOUR ACCEPTANCE. BY ACCEPTING THIS AGREEMENT, YOU ARE DEEMED TO HAVE RECEIVED, READ, UNDERSTOOD AND AGREED TO BE BOUND BY THE TERMS AND CONDITIONS FOR BUSINESS FACILITIES REFERRED TO ON PAGE 1 OF THIS FACILITY LETTER, AND BY THIS FACILITY LETTER.

It was signed on behalf of the company, by each of the directors, and dated **21 January 2013**.

The Provider has submitted that the expiry date of the loan was **09 February 2015**.

The Provider has submitted that a Notice was issued to the Complainant Company on **21 January 2015**, headed “*Notice of change in Loan repayment amount on your variable rate*”

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*Business Loan*” which stated the Final Repayment amount of €75,769.66 due on **09 February 2015**.

The Provider has submitted that the Complainant Company wrote to it on **27 January 2015** following receipt of the notice and offered €40,000, in full and final settlement. The Provider submits that its then Relationship Manager contacted one of the directors of the Complainant Company and it has submitted a note of the following conversation:

*Spoke with [Director of Complainant Company]*

*Loan expired and due for repayment as per offer letter accepted dated 15/01/2013.*

*Won't consider a settlement*

*Also haven't contacted SOA/Accounts etc*

*E40k plus Collateral? House [location] €80k*

*DSA does not apply to limited Company debt.*

*Advised him only option was to repay debt in full prior to the expiry date or send in financials for a restructure.*

The Provider has submitted that the Complainant Company “*made a second Settlement Proposal on the 9<sup>th</sup> February 2015, offering €56k as a full & Final Settlement of the Loan. A Credit Application was made on the 13<sup>th</sup> February 2015 to consider the offer. It was declined by Credit and a formal decline letter issued on the 13<sup>th</sup> February 2015.*”

By letter dated **13 February 2015** the Provider responded, declining the Complainants' credit application. The letter advised:

*We refer to your recent credit application for an alternative repayment arrangement in particular your proposal offer dated 9<sup>th</sup> February 2014 – for full and final settlement of your loan with [the Provider]*

*We carefully consider every application on its own merits and we have done so in this instance.*

*Unfortunately the Bank has decided not to approve your application for an alternative repayment arrangement/Settlement agreement on this occasion. The Bank is not prepared to write off the balance of debt.*

Subsequently, the Provider issued a Notice to the Complainant dated **25 March 2015** which advised that it had entered into an agreement to sell a loan portfolio to a third party provider, which included the Complainant Company's loan and that the transfer was due to take place on **16 April 2015**.

The Provider has submitted details of a Credit Application dated **07 April 2015**, to “*restructure borrowers expired variable rate business loan -6657 for capital and interest repayments over 6 years.*” This stated that:

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*“Application sent by [the Provider] for decision as loan sold.*

*Proposal presented to restructure expired loan on 6 year repayment plan after a number of settlement offers were declined on the basis full collateral value held and debt servicing capacity evident. If agreeable, then pricing to be advised?*

*Sent to [third party provider 10/4/15]*

*Decision by GS: Approval of new loan as outlined, however pricing at 7.5% over Prime, total 8.8% (otherwise refinance to [third party provider]*

On the final page under the heading “Key risks and mitigants” it states “borrowers and [sic] quite adement [sic] that previous RM in 2013 had promised a further extension/term (as previously enjoyed in 2011 & 2013) would not be a problem. The nature of short term legal maturity has been discussed/explained to their Solicitor.”

I note that the Complainant Company wrote to the Provider by letter dated **03 November 2015**, and expressed their concerns as follows:

*Our loan was changed from interest only in 2010 to a repayment schedule which was based on a 12 year repayment plan with a re-view every two years. [The manager] was questioned several times during our meetings as to why the agreement was for only two years and he assured us that this was for review purposes only and that the bank would renew a similar agreement and interest rate at each review until the loan was repaid. This assurance by [the manager] has not been honoured and our loan has been sold to [third party provider] who appear to be a private company who inform us that they do not provide loans over a period of 2 years which is totally unreasonable.*

*We are also disappointed to learn that the Provider do not appear to have informed [third party provider] of the assurances that [the manager] gave us in relation to our agreement.*

The Provider responded to the Complainant Company by way of its Final Response Letter dated **16 December 2015**, which I have set out below:

*The ‘interest only’ loan you describe was a 5 year term loan due for full repayment on the 17<sup>th</sup> January 2011 from sale of properties or from the company’s own resources. This is confirmed in your facility letter dated 08<sup>th</sup> July 2005 (copy enclosed). The loan was not repaid as envisaged, however the Bank agreed to restructure the loan for repayment per the terms of the Loan facility letter dated the 14<sup>th</sup> December 2010 (copy enclosed). The repayment obligations of this facility letter are very clear in that it was to be repaid by 24 consecutive monthly instalments subject to the right of the Bank to demand the immediate repayment of the loan on the occurrence of an event of default. The facility letter goes on to explain that the ‘repayment profile’ of the loan would be on the basis of a 12 year repayment schedule. This simply means that the 24 monthly repayments would be calculated as if the loan were extended over twelve years but at the end of the 24 months the borrower would be obliged to discharge the entire capital and interest then outstanding. The restructured loan superseded and cancelled the 2005 facility.*

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*The 2010 restructure loan was scheduled for repayment in January 2013, however at the company's request a credit application was again made seeking to restructure the loan in order to extend the terms of repayment. The repayment obligations of the facility letter dated 15<sup>th</sup> January 2013 are similarly very clear in that it was to be repaid by 24 consecutive monthly instalments subject to the right of the Bank to demand the immediate repayment of the loan on the occurrence of an event in default. The facility letter goes on to explain that the 'repayment profile' of the loan would be on the basis of a nine year repayment schedule. This simply means that the 24 monthly repayments would be calculated as if the loan was extended over nine years but at the end of the 24 months the borrower would be obliged to discharge the entire capital and interest then outstanding. The 2013 restructured loan was an entirely new agreement and superseded the provisions of the 2010 agreement. The loan facility was also repriced and incorporated specific pre conditions which were different to both the 2005 and later 2010 agreements.*

*With regard to the alleged assurances you say you were given to you. I have spoken with [manager's name] in this regard and he has denied any such assurances were given. Both the decision to agree and the terms of any restructure or extension of credit facilities rest solely with the Bank's Credit Department and not with the manager. The maximum loan term available to property loan restructures at that time was 1 to 2 years, and the credit applications made on your behalf in 2010 and 2013 reflect this situation. [Manager's name] has confirmed the terms of the loan restructures granted in 2010 and again in 2013 are reflected in the facility letters issued and accepted by the company at that time. It was the Bank's intention that prior to the loan expiry it would discuss terms for the further extension or restructure of this facility (based on an acceptable repayment strategy for the loan being agreed and the prevailing credit policy that existed at that time). However, the Bank never gave any commitment in this regard and it reserved the right at all times to demand full repayment of the loan facility pursuant to the terms and conditions set out in the facility letter of the 15<sup>th</sup> January 2013 in the event that it was not possible to agree acceptable terms for an extension or restructuring of the loan.*

...

*Your loan expired and was due for full repayment on the 9<sup>th</sup> February 2015 in line with the terms of the accepted facility letter dated 15<sup>th</sup> January 2013. The Loan was not repaid on the due date and was therefore in default when sold to [third party provider].*

*As the Loan and related collateral has now transferred to [third party provider], any discussions surrounding future proposals to restructure /repay the outstanding debt is between you and your new lender and any decision is at their sole discretion.*

### Analysis

With reference to the Complainants' submissions regarding representations which were made to them by their Relationship Manager over the years, I would note that there is a generally accepted position at law regarding the introduction of oral evidence to vary the terms of a written agreement. For reasons of public policy, the courts have not permitted

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oral evidence to be admissible, if it is introduced in an attempt to contradict the terms of a written agreement between the parties. This is known as the “parol evidence” rule.

The position was re-iterated recently by McGovern J., in ***Promontoria (Arrow) Ltd. v Mallon & anor*** [2018] IEHC 145. In that case, one of the Defendants, who had agreed to the loan, sought to argue that there was an oral agreement between the parties which was not included in the facility letter. His position was that the facility letter did not comprise the whole of the agreement but rather that there was “*another key term...which was not reduced to writing*”. I note that in the course of pronouncing judgment in the matter, the Court held that:

*“For reasons of public policy, the courts will not permit oral evidence to be admissible if it introduced for the purpose of contradicting the terms of a written agreement between the parties.”*

I consider that it is reasonable, in examining the within complaint, to proceed on the basis of the principle enunciated by the Courts in this regard. I accept therefore that, in the absence of any written evidence to the contrary, the written terms and conditions of the loan agreements which were put in place between the parties are the terms which governed the relationship between the parties.

Having had detailed regard to all of the evidence which has been made available to me, I note that the Provider had entered into an initial loan agreement with the Complainant in **2005**, which envisaged repayment of the loan after five years, from the sale of properties or from the Company’s own resources. I am satisfied that the subsequent **2010** facility letter clearly states that whilst the “*repayment profile*” of the loan was on the basis of a 12 year repayment schedule, i.e., that the 24 monthly repayments would be calculated as if the loan were extended over twelve years, nevertheless at the end of the 24 months the borrower would be obliged to discharge the entire capital and interest then outstanding.

A further loan restructure was granted to the Complainants, by way of a new loan agreement with the Provider, in 2013, with similar repayment provisions, namely 24 consecutive monthly instalments based on a 9 year repayment schedule, with all outstanding amounts falling due to be paid at the time of the last repayment instalment.

The Complainant Company was clearly of the view that the Provider would not demand full repayment and would continue to grant further extensions or restructures to the loans, and I note that the facility letters provided that:

*“Sometime prior to the intended final repayment date the Bank would propose to meet with the Borrower to consider the Borrower’s financial position and requirements at that time”*

However, the facility letters also contained the following proviso:

*“the Bank offers no assurance and gives no representation that any further loan monies or other credit will be offered to the Borrower by the Bank whether at that time, previous thereto or thereafter.”*

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Whilst the Complainant Company was clearly of the view that the Provider would not demand full repayment and would continue to grant further extensions or restructures to the loans, I am of the view that the facility letters very clearly provided for the full repayment of the loan at the relevant expiry dates.

I am satisfied that the Complainant Company was aware, or ought to have been aware of the terms of the facility letters which its directors signed and that by signing the loan agreements, it was bound by the terms and conditions governing the loans.

I note in this regard that that there was a clear warning, within each of the agreements that,

*“This is an important legal document and you are strongly advised to seek independent legal advice before you sign your acceptance. By accepting this agreement, you are deemed to have received, read, understood and agreed to be bound by the terms and conditions for business facilities referred to on page 1 of this facility letter, and by this facility letter.”*

On the basis of the evidence which has been made available to me, I do not find that there are any grounds upon which it can be fairly determined that the Provider acted wrongfully in not proceeding to renew or restructure the Complainant’s loan, in 2015.

I note that the Provider sold “*its non core SME Loan portfolio*”, in which the Complainant Company’s loan was included, to a third party provider, in 2015 (with the new provider taking over the loan on 16 April 2015). It has submitted that it was entitled to do so and that it did not require customer consent to do so , and that it provided notice to the Complainants, by letter dated **25 March 2015**.

I have had regard to the Terms and Conditions for Business Facilities, which were issued to the Complainant by the Provider, on 15 December 2010 and 10 January 2013. Section 18 is headed “Assignment” and Paragraphs 18.1 provides that:

*“The Bank may assign, transfer, mortgage, charge, novate or otherwise dispose or grant interests or security over the whole or any part of its rights and/or obligations under this Agreement without the Borrower’s consent...”*

I am satisfied, on the basis of the foregoing, that the Provider was entitled to sell the Complainant Company’s loan.

Overall, on the basis of the evidence available I do not find that the Provider acted wrongfully in not proceeding to renew or restructure the Complainant’s loan, in 2015.

**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  
DIRECTOR OF INVESTIGATION, ADJUDICATION  
AND LEGAL SERVICES**

10 July 2019

**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.**