An tOmbudsman Seirbhísí Airgeadais agus Pinsean
Financial Services and Pensions Ombudsman

Decision Ref:	2020-0228
Sector:	Banking
Product / Service:	Lending
Conduct(s) complained of:	Arrears handling Level of contact or communications re. Arrears
Outcome:	Substantially upheld

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

The complaint relates to the Provider's reliance on a Facility Letter issued in 2010. It is the Complainant's position that he did not sign this Facility Letter in acceptance of its terms, but only signed the section of the Facility Letter which related to "Consent to communicate".

The complaints are that (i) the Provider incorrectly adjudged the 2010 Facility Letter as being a valid letter, without having that issue adjudged independently, and (ii) incorrectly relied on the 2010 Facility Letter, as being a valid agreement.

The Complainant's Case

The Complainant states that he negotiated (among other facilities) a loan for €400,000 for the purpose of constructing a family home. The Complainant says that at all times the security agreed with the Provider was initially an equitable deposit of the title deeds for his farm (and subsequently a lien which was registered by the Provider in 2009). The Complainant states that in 2007 he signed a revised letter of offer on almost identical terms. The Complainant submits that in 2010 he was provided with a further letter of loan offer seeking to convert the term (from 10 years from 2007) to a period of 12 months which he says he knows was not sustainable. The Complainant states that he needed the term of 10 years, agreed in 2007, and says he was shocked that this letter was presented without any prior discussion. The Complainant's position is that he was then, and has

always been prepared to communicate with the Provider and signed, therefore only the "consent to communicate" section of the said letter.

The Complainant states that the Provider sought to rely on the letter of loan sanction dated 23 August 2010 on the basis that his signature in the "Consent to Communicate" section constituted acceptance of the offer, which he disputes.

The Complainant states that he cannot see how the Provider can maintain its position regarding the facility letter and he considers the Provider's adjudication of this issue to be a fundamental breach of the established principle of natural justice *"nemo judex in causa sua"* – one cannot be a judge in ones own cause.

The Complainant says he had been making his repayments annually in accordance with the 2007 loan agreement.

The Complainant wanted the 2007 loan sanction to be the applicable loan offer which governed his relationship with the Provider. The Complainant therefore says that the loan was not to expire until August 2017 and he was not in breach of any obligation to the Provider.

The Provider's Case

In relation to the complaint that the Complainant signed the Consent to Contact section of the 2010 facility letter only and did not agree to the new terms of the facilities, the Provider states the following:

- There was significant written correspondence and telephone communication between the Provider's solicitors, and the Complainant's solicitors. The Provider states that the issue around signing the 2010 facility letter was not raised by the Complainant's Solicitors in these communications until July 2016. The Provider says that its solicitors expressed surprise that it was being raised at that stage - six years after the event, noting that he has stated that he had a fundamental issue with it.

- The Provider states that in the course of this investigation, it reviewed its records and has found no record of any reference to the "consent to contact section" only being deliberately signed on the 2010 facility letter.

- The Provider states that in the course of this investigation, it has contacted a number of bank officials, including Relationship Managers on the Relationship Management Team who dealt with the file from 2010 to July 2016. The Provider submits that none of them have any recollection of any issue around the signing of the 2010 facility letter (or a refusal to do so) being raised or mentioned to them by the Complainant. The Provider states that the only record located in this regard is a record from 2010, commenting that the Complainant had refused to sign a facility letter in 2009. The Provider states that since 2010 there would have been a number of meetings with the Complainant and these bank officials and the matter was not raised or highlighted to them.

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- The Provider submits that there is no previous written record of the Complainant recording his refusal to sign to accept the terms of the facility letter with the bank.

The Provider's position is that in the absence of such circumstances, the facility letter was accepted in good faith by the Bank. Its position is that the Complainant had intended to accept the facility letter, but had inadvertently signed it in the incorrect place.

The Provider states that it remains satisfied that the facility was governed by the 2010 facility letter and states that:

(i) The original application to its Credit Team in 2006 prepared by a bank official states that the original request from the Complainant was for a five year interest only facility as follows:

"The advance has been sought interest only for up to 5 years, thereafter the amount outstanding to be placed on repayment schedule, with repayments to be met to coincide with … income, or alternatively repaid in full from the disposal of proceeds".

(ii) It remains satisfied that the 2010 facility letter governed the loan in question.

(iii) While the 2006 facility letter does mention a ten year term of availability, the facilities were issued as a demand loan, that is, repayment on demand being made by the Bank at any time.

(iv) In keeping with good practice, the Bank requires facilities to be reviewed annually and this is detailed in the facility letter. This is so that the Bank can confirm it remains satisfied with the risk. The Provider states that the facility letter clearly confirms that the facilities would be reviewed annually.

(v) The Repayment section on page 1 for the Overdraft facility, states:

> *"Subject to the Bank's right to demand repayment at any time, the Facility will be available until notification to you by the Bank of its intention to cancel the Facility. Without prejudice to the Bank's rights under this clause, the Facility will be subject to review on at least an annual basis*". (the Provider's emphasis)

(vi) The Repayment section for each of the three demand loans states:

> *"In the absence of demand, this loan has been granted on an interest only basis for one year and will be reviewed annually. You have the option of repaying the outstanding balance at any time during the term of the loan. In the event of any instalment not being paid on the due date or any material change in circumstances the Bank may call for early repayment in full or review the interest rate".* (the Provider's emphasis)

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(vii) The Provider's position is that there was no ambiguity in the facility letter that the Facilities:

(a) would be reviewed annually, and
(b) could be withdrawn by the Bank or the interest rate could be reviewed if there was any material change in circumstances.

(viii) The Provider submits that these clauses, terms and conditions were repeated in the 2007 facility letter, which the Complainant seeks to rely upon.

(ix) The facility letters as issued did not state and cannot be taken to read, as a commitment by the Bank that the facility was available to the Complainant for ten years, without these reviews being undertaken by the Bank.

(x) It would not make commercial sense and is not its practice for to issue loans on an interest only basis for such a long term with no defined source of repayment, without reviewing it annually to be satisfied with the exposure. The Provider states that it is obliged to review and assess the risk of repayment attaching to all its borrowings".

The Provider states that in relation the 2010 facility it notes the following:

- The Complainant disputes that he signed the Facility Letter. The Provider says however, by continuing the loans and meeting the interest quarterly is / was a part performance of the facilities in place.
- The 2007 facility letter stipulated that the facility would be reviewed annually, which the Bank did.
- The Provider states that having completed the review in 2010, the Bank also clearly communicated in the 2010 facility letter, the terms upon which it was satisfied to continue the loan.
- The Provider states that a facility is a commercial decision that the Bank is entitled to make at its own sole discretion.
- The Provider submits that the economy of the country was in a lot weaker position in 2010 when the fresh facility letter was issued than in 2006 when the facility was sanctioned.
- The Provider submits that one of the significant comforts for the Bank in 2006 was that the Complainant had a portfolio of investments in 2006 of about €l.16m, and states that by 2010 this had fallen significantly and that the sale of the farm would most likely be required to clear the loan.
- The Provider states that it is fully appreciated that the Complainant would have been distressed by the loss of significant investments funds during the recession, and that his preference may have been to hold off the sale of the farm until such time as the economy recovered and preferably at a time of his own choosing.
- The Provider submits that the loss of the investment funds and the change in market conditions in the economy constituted material change in circumstances as detailed in the Repayment section of the facility letters.

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- The Provider submits that from its perspective it had concerns about repayment of the debt with no defined timescale committed to.
- It is the Provider's position that if the Complainant disputed the terms offered by the Bank for the loan in the 2010 facility letter or any facility letter, he had the option as detailed in the facility letter to repay it at any time
- The Provider states that the 2011 expiry date for that loan detailed in the 2010 facility letter was consistent with the Complainants initial request for a five year interest only term.
- The Provider states that it was open to the Complainant to reach agreement with the Bank before August 2011, to put in place alternative agreement for the repayment of the loan.
- The Provider states that while there were discussions over the subsequent years, the Bank did not immediately enforce the terms of the 2010 facility letter by immediately calling up the total advance when the loan was not repaid in August 2011, and that it was not possible to reach a subsequent agreement for repayment with the Complainant.

In relation to the aspect of the complaint relating to the handling of the Complainant's complaint, the Provider states that complaints are initially investigated internally by the Bank, and its complaint handling and audit processes include a strong focus on fair outcomes for the customer. The Provider submits that complaints are upheld by the Bank where it has been determined that it has made an error following a full investigation of the facts of each case.

The Provider states that in relation to this complaint, the Bank employed an external firm of solicitors at its own cost to fully investigate the complaints made. The Provider submits that the external firm of solicitors issued its response on behalf of the Bank, having formed its own independent opinion as to whether the complaints made should be upheld or not.

The Provider states that if a customer disagrees with the outcome of the complaint, the legislation provides the customer with the right as has happened in this case, to ask the Financial Services and Pensions Ombudsman to investigate the matters. The Provider states that alternatively, a customer has the option of taking legal action against the Bank.

<u>The Complainant's submission of 26 January 2018</u>

The Complainant state that the issue referred to the Ombudsman's office for adjudication herein was whether, pursuant to the fundamental rules of natural justice (In particular *Nemo iudex in cause sua*) the Provider itself could adjudicate on a matter which has significant adverse consequences for the Provider had it not found in its own favour. The Complainant submits that the Provider in its response entirely ignores this primary complaint and focuses on the individual aspects of its decision and how it reached such a conclusion. The Complainant states that this misses the very principle which is in question, that is, how could the Provider be independent in making any decision which directly

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affected it. The Complainant says that disingenuously, if not worse, the Provider states: *"In this case, the Bank employed an external firm of Solicitors at its own cost to fully investigate the complaints made. The external firm of Solicitors issued its response on behalf of the bank, having formed their own independent opinion as to whether the complaints made should be upheld or not".*

The Complainant states that this is absolutely disputed. The Complainant submits that the "independent firm of Solicitors never sought to suggest that they were investigating on behalf of the Bank rather, they were the conduit through which information was exchanged between the parties. The Complainant states that in their correspondence the Provider's solicitors clearly state "the matter has now been fully Investigated by the Bank's Unit". The Complainant states that the Provider's solicitor then stated that "the Bank believes it is now appropriate to provide you with their [not mine/our] formal response to the complaint".

The Complainant refers to the Provider's statement that the Complainant did not raise issue with the 2010 facility letter in the communications with its representatives until July 2016. The Complainant disputes this. The Complainant states that he first consulted his solicitors in relation to this matter in early July 2015. The Complainant states that his solicitor first wrote to the Provider on 13th July 2015 and in the second sentence of that letter raised issue with the applicable letter of offer and clearly state that it "is clear that the facility letter which governs the relationship between yourself and [Complainant] is that dated August 2007".

The Complainant states that this letter was penned in specific response to the Provider's intermediary correspondence to the Complainant seeking to enforce the terms of the 2010 letter of offer which had not been signed by him. It is the Complainant's solicitor's recall that she further had a detailed conversation with the Bank's Solicitor in October 2015 in which she confirmed that the Complainant's absolutely disputed the enforceability of the 2010 letter. The Complainant's position is that in all of his communications with the Provider the Complainant expressed his dissatisfaction with any attempt to seek to enforce the 2010 Facility letter which had not been signed by him. By way of example, the Complainant refers to a letter dated December 2014 in reply to letter from a Provider representative FD.

The Complainant refers to the Provider's submission where it states that: "In the course of this investigation, I have contacted a number of Bank officials etc" and states that none of these officials are named nor was he offered the opportunity to have sight of their sworn testimony in this regard he specifically recollects numerous interactions with two Managers of the local branch of the Bank PL and BF. The Complainant states that BF specifically asserted that she could not change the terms of the Facility without his Agreement because of the provisions of the 2007 Facility letter. The Complainant states that PL, when handing over management of the Account to AC said in the presence of the Complainant that he "would be difficult to deal with" as he refuses to sign a new facility letter. The Complainant states that this was a reference to the fact that he had declined to

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sign the 2010 letter and all other letters which did not reflect the terms of the 2007 facility letter.

The Complainant submits that in August 2011, PL emailed a set of proposed terms which were rejected by him. The Complainant questions why such a proposals would have been made if the Bank believed it was, as it claims, entitled to rely on the 2010 Facility letter.

The Complainant states that on 10th November 2014, FD, newly appointed Manager to the Account wrote to him clearly stating "*Please find enclosed the most up to date signed Facility letter on file"*, the attachment to that letter is the 2007 Facility letter and clearly states that "a loan of €400,000 was sanctioned for a 10 year term". The Complainant notes that it concludes *"If you have a signed Facility letter further to the 31st August 2007 in relation to this matter please forward a copy of same"*. The Complainant's contention is that the Bank subsequently saw an opportunity to exploit the fact that he had signed the 2010 letter in the "Consent to Communicate Section" (to evidence the fact he was always willing to discuss, communicate and come to a mutually agreeable repayment schedule) and no more. The Complainant states that the Provider never sought to enforce the 2010 Facility letter though an independent forum, namely the Courts system, rather it chose to adjudicate upon its applicability itself, which is the very essence of this referral to the Ombudsman.

In relation to the Provider's statement, "there is no previous written record of [the Complainant] recording his refusal to sign to accept the terms of the facility letter with the Bank", the Complainant states that that from his correspondence and the correspondence of his solicitor referred to above, this is patently untrue.

The Complainant states that in referencing the Repayment Section the Provider deliberately and fundamentally omits the relevant section and one of the primary reasons he declined to sign the 2010 Facility letter *"post drawdown of the advance capital and interest repayments will be set over a mutually acceptable term".*

The Complainant submits that the Provider states *"the decisions on what terms the Bank is satisfied to continue the facility are commercial decisions that the Bank is entitled to make at its own sole discretion".* The Complainant says that this contradicts the terms of the 2007 letter quoted above. The Complainant states that clearly it can be appreciated that there must be mutuality of agreement. The Complainant's position is that if the Provider could change the terms and conditions of drawdown unilaterally it would create an impossible commercial relationship. The Complainant states that the Provider's attempt to do just that in 2010 was what the Complainant objected to. The Complainant states that he could not permit himself to agree to a facility letter which altered the terms of the facility to far less favourable terms and asserts that he explained this very clearly to the Managers with whom he dealt. The Complainant's position is that at all times he made it clear he was willing to communicate with the Bank in order to come to mutually agreeable terms and that this remained the position.

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As regards the Provider's statement that *"by continuing the loans and meeting the interest quarterly is/was a part performance of the facilities in place",* it is the Complainant's positon that by continuing the loans and meeting the interest (the increase of which rate has consistently been disputed by the Complainant) was his performance of the terms agreed pursuant to the 2007 Facility letter and evidences bona fides on his part and no more. The Complainant states that further the Provider states that the value of the loan had increased, which he says is clearly incorrect. The Complainant states that the original amount of drawdown was in the region of €700,000 the residual value when the loan was sold to a new owner was €350,000. The Complainant states that clearly substantial repayments of interest and capital had been made.

The Complainant notes that the Provider's references to the deterioration of the economic climate between 2007 and 2010 as a commercial basis for seeking to impose much less favourable terms in 2010. As regards this reference the Complainant states that the deteriorated economic climate equally impacted him severely and he too needed to act commercially to ensure the best outcome for him, his family and his enterprise while remaining respectful of the commercial interests of his financial institution. The Complainant states that to this end he continued to make substantial Capital repayments and interest payments to evidence his bona fides. The Complainant states that he repeatedly sought to come to mutually agreeable repayment terms with the Provider (up to and including the sale of this loan to the new owner) but the Provider simply demanded full repayment when it was not possible. The Complainant says that the Provider's contention that it regarded the Complainant's Accounts as "not viable" took no cognisance of the value of the stock carried on the farm throughout those years of about €250,000.

The Complainant submits that the Provider has at all times made it clear (reiterated in its Submission) that it was at all times acting in its own commercial interests with no regard for the commercial interests of him, its customer. The Complainant questions why, if the Provider was absolutely satisfied that it had good legal grounds upon which to enforce the applicability of the 2010 facility, it did not do so (albeit the Complainant asserts that any such proceedings would be strenuously be defended). The Complainant questions why the Provider choose to sell the loans to *a Vulture Fund* rather than enforce the Facility Letter. The Complainant contends that the Provider did so because it formed the opinion that it would not be in a position to enforce the 2010 Facility letter. The Complainant submits that rather than taking Legal Action it chose to determine itself which facility governed the relationship. The Complainant notes that the Provider contends that it sold the debt to a third party *"as it could see no way forward in having its loan repaid, noting that the debt continued to rise"*. The Complainant argues that this suggests that the Provider was satisfied that it could not enforce the 2010 Facility Letter.

The Complainant suggests that the Provider is selective in the correspondence provided and on which it seeks to rely.

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Evidence

31 August 2007 Facility Letter

> *"Repayment*
> *In the absence of demand, this loan has been granted on an interest only basis, for the first year, and will be reviewed annually. You have the option of repaying the outstanding balance at any time during the term of the loan. In the event of any instalment not being paid on the due date or any material change in circumstances the Bank may call for early repayment in full or review the interest rate.*
>
> *Post drawdown* of *the advance capital and interest repayments will be set over a mutually acceptable term".*

July 2010 - Provider File Note -

> *"RM met with holder in July 2010 to carry annual review. At review meeting PL advised holder that we would be seeking a rate increase on facilities. Holder was seeking extension of interest only facilities for a further year. Holder refused to sign facility letters issued to him last year by previous Relationship Manager and refused to pay a renewal fee for his overdraft facility. Holder was advised at meeting that an arrangement fee of €150 would be charged for the renewal of the overdraft facility. If it was required going forward. Facility letters will be issued to customer on 23rd August 2010".*

23 August 2010 – The Facility Letter, signed by the Complainant in the consent to communicate section. It was not signed in relation to an acceptance of the agreement.

17 August 2011 – Provider representative PL e-mail – suggested restructure of loan

13 March 2013 – The Provider to the Complainant

> *"Default Notice Served Under Section 54 of the Consumer Credit Act 1995*
>
> *The above agreement contains a provision requiring you to make full repayment of this debt on or before 22nd August 2011. In breach of that provision the payments are in arrears to the extent of …"*

14 March 2014 – Provider's letter to the Complainant

> *"As your above loan account is secured on your Primary Residence (amongst other security), your mortgage falls under the protection of the Central Bank of Ireland's Code of Conduct on Mortgage Arrears (CCMA)".*

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10 November 2014 – The Provider's letter to the Complainant

> *"Re Review*
> *Further to our telephone conversation this afternoon please find enclosed the most up to date signed facility letter on file. …. If you have a signed facility letter further to the 31st of August 2007 in relation to this matter please forward a copy of same".*

9 December 2014 – The Complainant to the Provider.

The Complainant sets out how he has <u>not</u> defaulted on agreed repayment as per 2007 Facility and that he would not be putting his signature on any new facility letter that deviates from the August 2007 letter.

16 February 2015 – The Provider's letter to the Complainant

> *"Following a full assessment of your appeal we are pleased to inform you that your appeal have been upheld and the not co-operating borrower status will be removed for your account.*
> *..*
> *As per the signed facility letter dated 31st August 2010, the interest only repayment period has expired since 23rd August 2011 and there is a requirement for you to make Capital and Interest repayments. As a result of the required repayments not being received your loan facility is now in default".*

13 July 2015 – The Complainant's solicitor to the Provider

> *"It is clear that my client is absolutely compliant with the Letter of Offer which governs his relationship with [the Provider] in relation to this facility. It is equally clear that my client has been put under extraordinary pressure including service of default letters (which the Bank have now acknowledged through its Appeals Board were de facto incorrect), reduction of his overdraft limit previously enjoyed; repeated requests to sign revised letters of loan offer, changed interest rates, requests to convert to mortgage facilities etc., all without any suggestion that my client should receive independent financial or legal advice".*

31 May 2016 – Provider's response to the Complainant's Solicitor

> *"As previously advised … the Facility Letter which governs the relationship between [the Provider] and [the Complainant] is the Facility Letter dated 23 August 2010. As per this Facility Letter, the interest only repayment period expired on 25th August 2011 and as a result, your client is in default. This was also confirmed by the Bank's Appeal Board in their letter dated 16th February 2015. This element of the complaint is not upheld".*

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The Complaints for Adjudication

The complaints are that (i) the Provider incorrectly adjudged the 2010 Facility Letter as being a valid letter, without having that issue adjudged independently, and (ii) incorrectly relied on the 2010 Facility Letter, as being a valid agreement.

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 **05 June 2020**, 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.

On **05 June 2020**, the Complainant's representative acknowledged receipt of the Preliminary Decision. On **22 June 2020**, the Provider also acknowledged receipt of the Preliminary Decision. The Complainant and the Provider did not comment further on the Preliminary Decision.

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

Analysis

The Complainant states that the Provider was incorrect in making its own enquiry and giving a decision that the Facility Letter was a valid letter. The Complainant's position is

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that by making that decision, the Provider breached one of the principles of natural justice, that is, one should not be a judge in one's own cause.

I accept that where a complaint is made to a Provider or an issue is raised with a Provider, that it is appropriate for the Provider to investigate the complaint / issue, and arrive at a decision on the matter. When a Provider does this, it must then inform the customer that if he/she remains dissatisfied with the Provider's response that he/she can refer the matter to the Financial Services and Pensions Ombudsman. The customer in any dispute with a Provider, also has the option of pursuing their rights through the courts as an alternative to this Office.

I accept that the Provider acted correctly in this regard, and I do not propose to uphold this aspect of the complaint.

In relation to whether the Provider correctly sought to rely on the 2010 Facility Letter, I consider that there are shortcomings in the Provider's conduct. I believe that the Provider, in seeking to bind the Complainant with 2010 Facility Letter, the Provider Bank did not ensure that the Complainant correctly signed the documents establishing the mutuality of obligations of borrower and lender. Those basic steps of the ordinary establishment of a proper relationship of borrower and lender did not happen here in relation to the 2010 Facility Letter. The Complainant merely signed the "Consent to communicate" section of the letter and did not sign the section specifically set out, and required to be signed, by the Provider relating to the acceptance of the terms and conditions outlined in that Facility Letter. This constitutes a radical departure from the procedures of a financial institution.

The Facility Letter stated:

> *"Acceptance*
>
> *The borrower shall indicate acceptance of the terms and conditions of the Loan set out above by signing and returning the attached duplicate of this facility letter. This offer shall remain open for fifteen (15) business days from the date of this letter and if the acceptance is not received within this time, the offer will lapse".*

The following section of the Facility Letter was unsigned by the Complainant:

> *"The Borrower hereby accepts the terms and conditions as outlined in this facility letter and it is hereby certified that all information provided during the application process for this Facility is accurate as at the date hereof:"*

In coming to my conclusion that the Provider was incorrect to rely on this letter that did not have the required signed acceptance from the Complainant of the terms and conditions outlined within it, I also had regard to Section 30 of the Consumer Credit Act 1995. Section 30 of this act sets out the General requirements relating to contents for credit agreements.

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Section 30 states:

> *"(1) A credit agreement and any contract of guarantee relating thereto shall be made in writing and signed by the consumer and by or on behalf of all other parties to the agreement …"*

I consider that the requirement for the agreement to be "signed by the consumer" can only mean signed in respect to his or her agreement to the terms and conditions of the facility letter. I do not consider that this happened in relation to the 2010 Facility Letter. I would expect the Provider to have a robust process for contractual documentation so as to ensure that its documentation is correctly drafted and signed in the appropriate places.

It is clear from the July 2010 Provider File note set out above, that the Complainant had previously not signed Facility Letters in the previous years, and I consider that the Provider should have checked the 2010 Facility Letter, to make sure that it was validly signed.

I am satisfied that the Provider was incorrect in its assertions that the Complainant or his representative had not raised issues about the 2010 Facility Letter until 2016.

The Provider has accepted in evidence that letters did issue to the Complainant from the Provider in November 2014, confirming that the 2007 Facility Letter was the only signed Facility Letter on record.

The Provider's November 2014 letter stated:

> *"Re Review*
> *Further to our telephone conversation this afternoon please find enclosed the most up to date signed facility letter on file. …. If you have a signed facility letter further to the 31st of August 2007 in relation to this matter please forward a copy of same".*

Despite this letter having issued to the Complainant in 2014, the Provider continued to maintain throughout the complaint process, and in its dealings with the loan account, that the 2010 Facility Letter was a correctly executed Facility Letter, and that it was entitled to rely on it in its dealing with the Complainant.

Having regard to all the circumstances of this complaint, it is my Legally Binding Decision that the complaint is substantially upheld, and I direct the Provider to make a compensatory payment of €15,000 (fifteen thousand euro) to the Complainant.

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Conclusion

- My Decision pursuant to ***Section 60(1)*** of the ***Financial Services and Pensions Ombudsman Act 2017***, is that this complaint is substantially upheld, on the grounds prescribed in ***Section 60(2)(g).***

- Pursuant to ***Section 60(4) and Section 60 (6)*** of the ***Financial Services and Pensions Ombudsman Act 2017,*** I direct the Respondent Provider to make a compensatory payment to the Complainant in the sum of €15,000, to an account of the Complainant's choosing, 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.

- 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.

GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

29 June 2020

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.