Biúró an Ombudsman um Sheirbhísí Airgeadais

Financial Services Ombudsman

Sample of Complaints Findings

July-November 2009

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Financial Services Ombudsman

1 December 2009

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€250,000 to retired farmer for bank's cavalier approach and belittling remarks

A husband and wife in their mid 60s retired from farming and sold land for €3m. They were approached by their bank and invited to invest in certain bonds which the bank was marketing. In April 2007 they invested €2m in two bonds which they understood were capital guaranteed. By December 2007 they were concerned about the fall in value of the bonds to €1.88m but were assured that matters were fine. In May 2008, the Complainants had asked about cashing in their investment as it had now fallen to €1.75m but were persuaded by the bank not to do so as matters should improve. By August 2008 they were very concerned that the value of their investment had fallen further to €1.6m and took the matter up with the bank. The bank official who was dealing with them stated that "*they had nothing to worry about because it was a guaranteed fund*''. This simply was not true . Six weeks later the bank reluctantly admitted to the Complainants that it had given them wrong information. Eventually in October 2008 they cashed in the bonds for €1.46m with a loss of €160,000 arising since August 2008 - the overall loss on the investment was €540,000.

Having reviewed and considered the evidence of both parties, the Ombudsman felt that the Complainants were at best confused, or at worst, completely misled by the bank in regard to the nature and state of the investments. However the cavalier manner by which the bank dealt with the matter since December 2007 and especially compounded by the August 2008 actions was highly unsatisfactory. The Ombudsman felt that a large compensation award was merited. He accordingly awarded the maximum compensation he can award, €250,000, for the consequences suffered by this couple as a result of the overall conduct of the bank. He also directed that the bank should make a formal written apology for belittling remarks made by one senior official that "*having done so well out of the sale of your land, you ought not to be complaining about the losses incurred when the proceeds were invested*".

€410,000 invested in Property Bond to be refunded in full

A longstanding lady customer of a Bank, aged 68, whose family house was sold lodged her portion (€410,000) of the sale proceeds with the Bank in December 2007. She had been separated for some time from her husband, lived alone, had no pension, was working part time and at the age of 68 she felt she had little prospect of getting a full time job. She and her son met with the Bank in January 2008 to discuss possible investment opportunities where she already had €100,000 in total invested with the Bank in a property fund bond on two separate occasions in 2000 and 2005. She was advised to invest all the money that she held on deposit in the same fund and she claimed that no other investment options were discussed. When she later met with the Bank during April 2008 she was informed that the investment had been devalued by 12.5% but there was no need for her to worry. She also alleged that she was given further assurance in June 2008 that the investment would recover. By October 2008 the €410,000 investment had fallen by €224,000 to €186,000 and there would also be a penalty of €10,000 if it was to be encased at that date. Furthermore, if she wished to withdraw from the investment at any stage she would have to give six months' notice for any encashment in excess of €100,000 and she alleged that this was not brought to her attention at the investment meeting. In February 2009, because she was not getting satisfaction from the Bank, she complained to the Ombudsman.

The Ombudsman noted that shortly after the commencement of the investment the unit price was reduced by the bond provider by 12.5% as this adjustment was made to protect the remaining investors and was done due to difficult property market conditions. The Ombudsman also noted that the Complainant had made it clear at the time of the investment that she would soon be requiring an income as she had no other means to support herself.

The Bank stated that in the course of the January 2008 financial planning consultation the Complainant indicated that she did not want a full financial review and did not require any access to the investment during the five year term. The Bank also indicated that it offered her the choice from a selection of four different suitable investment products but that she had decided to place the full amount of her investment in the property fund in which she had already invested on two separate occasions. However the Ombudsman noted that the fact find, allegedly completed at the meeting, was not signed by the Complainant but she was categorised as medium risk, i.e. the investment was susceptible to decrease in value. He was concerned that the fact find was not signed and contained a number of significant errors such as that her son was described as female; she was identified as a widow and non-smoker when in fact she was separated and was a smoker. In addition, her home and contents were valued at €1.1m when in fact she stated that they were worth only €150,000. While she was also identified as having a cash deposit of €700,000 she in fact only had a deposit of €20,000. In effect she was classed as having total assets of €1.8m when in fact they were only worth €200,000. There were various other inaccuracies in the fact find as well. The Ombudsman also noted that all her moneys were placed in a single product thereby increasing her exposure to the market. When all of these were taken into account, together with the fact that on the same day the Bank claimed that the contents of the brochure as well as the issue of risk v reward and other important features of the investment such as restrictions and transfers out of the investment were explained to the Complainant, the Ombudsman felt that the procedure followed could not but have been hurried and indeed haphazard. He also considered that the investment proposal could not have been fully and adequately explained at the meeting.

The Ombudsman was also concerned that at the meeting in April 2008 the Bank did not adequately inform her of the options that were available to her at this time, i.e. not informing her that if she wished to withdraw from the investment at that stage she would have to give six months' notice of any encashment in excess of €100,000. It appeared to the Ombudsman that the Bank at that meeting seemed to be motivated by the desire to keep the existing investments in the fund.

The Ombudsman stated that the investment was a significant step for the Complainant, yet her employment status, level of income, asset value and marital status were recorded incorrectly. The Ombudsman was satisfied that the Bank did not adequately take account of the Complainant's age, nor did it address concerns that would normally apply to a separated person, working part-time who was about to retire without a pension. It also involved a five year commitment without access to funds without a penalty being imposed. While the Ombudsman accepted that the Bank had provided a Suitability Letter and explained the 30 day cooling-off period, nevertheless it is often the case, as it appeared in this case, that this was of limited, if any, value due to the fact that the investor was placing a high degree of reliance on the representations received at the original meeting.

Accordingly, the Ombudsman held that the Bank failed in its duty of care to the Complainant and so as to rectify the conduct complained of and its consequences, he directed that the Complainant should surrender the bond and at the same time the Bank was to return the €410,000 to her.

Early intervention by Ombudsman results in €143,000 paid to two elderly couples

If a Financial Service Provider is not cooperating with his staff or not adhering to the agreed guidelines and procedures under which his Office operates the Ombudsman will not hesitate to intervene personally to speed up matters. It is regrettable that he has to do this occasionally. The following are just two instances where the direct personal intervention of the Ombudsman resulted in very favourable outcomes in a short time period for elderly couples without the need for detailed investigations by him.

Case 1:

An elderly couple were encouraged to invest a substantial amount of their life savings (€30,000). The couple, on realising that they were, in fact, after investing their money in an investment bond, rather than placing it in a deposit account, as they thought they had, contacted the Ombudsman for his assistance. Normal procedure was followed in which the complainants had initially to write and request a final response letter from the financial service provider in question justifying its position. This letter was requested in March 2009. As the agreed timeframe of 25 working days in which the provider had to respond had passed without any final response letter being issued and continued reminders from his staff were ignored then the Ombudsman intervened personally. After sustained pressure from him on the Company to issue the response immediately, the Company instead decided to settle and in July 2009 returned the €30,000 with interest of €500. The complainants informed the Ombudsman they had since placed their money where they had originally decided to – in a deposit account!

Case 2:

The complainants, an elderly, retired couple, went to place their money in a "*deposit account with a good interest rate*". The complainants had

€113,000 of savings. After discussing options with a bank official, the complainants instead signed up to a *‘‘high risk investment’’*. It was not the intention of the complainants to pursue this option. After making a complaint to the Ombudsman the complainant’s did not receive a response from the bank within the required timeframe. Indeed, the complainants were extremely distraught as their investment continued to drop sharply in value each passing day. Despite several emails and phone calls being made to the provider in question by the Ombudsman’s staff, no final response letter was issued after another 10 days. The non-compliance by the bank was then brought to the attention of the Ombudsman himself, who took personal charge of the case. He immediately contacted the Head of Compliance of the bank and set a very short deadline for a final response letter to be issued. He also expressed his extreme dissatisfaction at the delay by the bank - comments which were acknowledged and noted by the relevant personnel. On reflection, the bank accepted that errors had been made in both the selling process and indeed, when dealing with the complaint. It then made an immediate full re-imbursement of the investment plus interest accrued.

He trusts that situations like the foregoing will rarely happen in future as the stress and anxiety it can cause especially to the complainants as well as taking up unnecessary staff time in his Office is just not acceptable.

Granny’s €10,000 burial fund and grandchild’s €2,200 nest egg wrongly invested

An 80 year old grandmother made two complaints to the Ombudsman about the alleged actions and advice of a tied agent (the Bank) of an Insurance Company and the actions of the Company was causing her stress and anxiety.

The first complaint related to an account which she opened with the Bank on behalf of a new born grandchild. This account was a 21-day Regular Saver account, which she opened in November 2006 with an amount of €200. She stated that she lodged over time a further €2,000 to what she believed was to this account but she was never made aware until October 2008 that the account was changed to a different investment account with the Company in August 2007. When she went to cash it in then its value was only €1,900. She was dissatisfied that although she only wanted a simple savings account on behalf of a grandchild, the Company had in August 2007 changed the account to a long-term investment plan which she considered was not suitable to her needs. She argued that she was never given any explanation for this and requested that the €2,200 be returned to her. The Ombudsman noted that the Company accepted that the Complainant’s intention was to provide a savings fund for her grandchild using a 21 Day Regular Savings account and that the Complainant requested *“easy access”* to this account. He noted that this type of account was changed in August 2007 following a review by the Bank with her. However, the Ombudsman also noted that after August 2007 she could only access the funds by incurring large penalties. According to the policy documentation this new account was *“an open-ended regular payment savings* *plan''* and "*as an investment for a period of at least five years.*" The Ombudsman therefore upheld her Complaint.

The second complaint related to an amount €18,000, which she advised the Bank, before she invested it with them, that it was a "*burial fund*" and "*emergency expenses*" for herself and her husband. She also advised it that this was the first time in her life that she had such a substantial amount of money. According to the Company she had intended lodging the cheque to a current account but the Bank advised her otherwise. In August 2007 after she spoke with the Bank branch personnel she made the investment but she was distressed to discover in October 2008 that €10,000 was invested in a long term Company investment policy, leaving her with no immediate access to this money and its value then was also only €8,500 but subject as well to an early withdrawal penalty of €355. She requested that her €10,000 be refunded but the Company refused as it was of the view that this investment was sold in the correct and proper manner and that Bank staff acted in her interests at all times. It advised her that she could at any time surrender it, but confirmed that she would incur exit penalties and get back less than her original investment.

The Ombudsman firstly considered whether the advice given was appropriate. He noted that the €10,000 investment did provide guarantees in relation to the return of the initial capital at maturity, albeit six years later. The remainder of the lump sum (€8,000) was in a 21 day deposit account in order to provide access for emergency use. The Ombudsman was satisfied that the Bank acted appropriately in setting up this 21 day access deposit account of €8,000 for emergency use.

As for the €10,000 investment the Ombudsman considered whether it was suitable given her age, life expectancy, health circumstances and particular needs. The Company informed the Ombudsman that the life expectancy for a lady of 79/80 was in the region of ten years and a six year equity liked investment time frame would not be considered overly long based on her life expectancy and given that she had ready access to the €8,000 account. The Ombudsman found that the Complainant made it clear to the Bank that she required the full lump sum for burial purposes and emergencies, her husband was ill and she had informed the Bank that this was the first time that she had such a large sum of money in her possession. He noted that this equities linked investment, with a maturity term of six years, meant that withdrawal before the age of 85 incurred large penalties. He also noted that she was unaccompanied when she was getting the advice though she had been offered this opportunity. The Company also issued to her a few days later all necessary policy documentation as well as offering her the normal *'cooling off period'* to withdraw from the investment. She admitted to the Ombudsman that from time to time she received letters in relation to the accounts, but "*left them in a box.*" Various other packages were also received from the Company but she did not understand why she received them. Indeed when she brought these packages to the Bank branch, she said that the staff person to whom she spoke "*just tore them up and said forget about them.*" The Ombudsman finally observed that no evidence was submitted by the Company or the Bank to show that she had any previous investment experience.

After reviewing all the submissions made by both parties the Ombudsman was satisfied that this lady of advanced years was a genuine person who had little knowledge of the finer points of investments, she just wanted to provide for her own needs but with an overriding requirement of security of capital and immediate access to the funds. He found that the €10,000 investment did not meet this criteria and was sold to the Complainant without the exercise of due care. However the Ombudsman accepts that a six year equity based investment account for persons of advanced years can be appropriate in limited circumstances but each case must be considered on its merits.

The Ombudsman accordingly directed the Company to buy back the investment for the original €10,000 and to pay this amount to her. Similarly, he directed that the grandchild's €2,200 should be returned to her and the account be closed. He also directed that an additional sum of €1,000 was to be paid as compensation for the stress and inconvenience caused to her and to take into consideration any interest due.

€175,000 award where €290,000 loss suffered by elderly couple

An elderly couple (wife 73, husband 80) took €1½m from a deposit account and invested it in a Managed Fund, having been advised to do so by an investment advisor at their bank. They brought a complaint to the Ombudsman when there was a serious fall in the value of their investment. A year after investing in the fund, being worried about the fall in the value of the fund, they cashed it in for €1.2m, a loss of €290,000 in twelve months. Their complaint to the Ombudsman was that the bank was negligent in selling them this product where the capital sum was not guaranteed as they thought it was.

The Ombudsman, in his finding, noted that it was the Complainants who had themselves approached the bank seeking a better return on their deposit account and that a fact find had been correctly made out showing that the aim of the couple was "*to achieve income and growth*"; that the sum invested represented approximately 40% of their total assets and that the promotional brochure with which they had been furnished stated that there was no capital guarantee. Also their adult children were present at the meetings. That was all in favour of the bank's position.

However, the Ombudsman found that a covering letter from the bank had described the fund as "*a guaranteed fund*" and a further letter from fund owners had also described the fund as "*guaranteed*". Neither of these statements was true. The fund was not a guaranteed fund, it was an open-ended investment, with no maturity date, and was categorized as a medium risk investment.

It was clear to the Ombudsman that the Complainant made the investment in the Fund because they were dissatisfied with the rate of return from the deposit account. He noted that investigation of the complaint by the bank had been hindered by the fact that it had been unable to obtain a statement from the former staff member who sold the investment or even to make contact with him.

In arriving at his decision, the Ombudsman had to balance the facts that on the one hand the Complainants had themselves sought the advice from the bank (not having been approached first) and signed up to the Terms & Conditions. On the other hand, the mistaken description of the fund as "*guaranteed*" in two letters from the bank might reasonably have misled the customers that their capital sum invested was guaranteed, when in fact it was not. On balance the Ombudsman ruled that there was fault on both sides.

The Bank, on a without prejudice basis, had offered the Complainants €120,000 but this had been rejected. The Ombudsman was not satisfied with this amount and instead directed that 60% of the loss must be met by the bank. Accordingly the Ombudsman awarded €175,000 in compensation to the Complainants.

Mortgage rate had to return to original tracker rate at the end of fixed rate period

In June 2007 a couple took out a €1m thirty year mortgage from a Building Society based on a tracker rate of 0.75% over the ECB Repo rate. In August 2007, the Complainant decided to switch to the Society's two year fixed rate of 4.79% and signed a Mortgage Form of Authorisation (MFA) in order to avail of this. The fixed rate term expired in August 2009. On its expiration the Society ruled that a tracker rate of 1.1% over the ECB Repo rate would be applied. The couple complained to the Ombudsman that the terms and conditions of the original mortgage offer ought to be applied and that the interest rate should revert to the tracker rate of plus 0.75%.

The Society however disagreed and insisted that the MFA served to displace the tracker rate condition in the original loan offer. In fact, the Society submitted that it was not even obliged to offer the Complainant a tracker rate of 1.1% above the ECB Repo rate. The only reason this rate was being offered was because a letter was sent to the Complainants in error in December 2008, which indicated that the Complainant's mortgage would roll onto a tracker rate of ECB Repo rate plus a margin of 1.1%. The Society had decided to offer this rate because this erroneous letter could have led the Complainants to expect that they were entitled to this rate.

Having considered the evidence submitted by both parties, the Ombudsman was of the opinion that the original loan offer committed the Society to a tracker mortgage rate of 0.75% above the ECB Repo rate for the entire 30 year mortgage term. However, the Society had agreed to the Complainants' request to fix the mortgage interest rate for two years. Indeed, the Society's right to allow customers to avail of a fixed rate of interest was covered under the conditions of the original loan offer. The Society also argued that a condition of the Complainant's original mortgage offer was superseded by the terms and conditions of the MFA.

The Society referred to the section of the MFA, signed by the Complainant, which stated: *"I acknowledge that following the acceptance by the lender of this application, the terms and conditions applicable to the loan shall be amended/ varied by the terms and conditions set out in this form of authorisation, and I accept the said conditions and agree to be bound by them"*. However the Ombudsman noted that the MFA further stated that the customer acknowledged and agreed that *"save as set out in this Form of Authorisation, all the terms and conditions applicable to the Loan remain unchanged."* There was no express condition on the face of the two page MFA form relating to either *(a)* which rate of interest would apply following expiration of the fixed rate period or (b) the procedure to be followed upon termination of the fixed interest rate term. Accordingly it could only follow that the terms of the original mortgage concerning these issues had to apply. The Ombudsman found that this was the only reasonable interpretation which could be gleaned from the wording of the MFA.

In summary the Ombudsman found that the mortgage condition was not superseded by the MFA and so the Society must offer the Complainant a tracker rate as per the original loan offer. In those circumstances, he upheld the Complainants' argument. The Ombudsman accordingly directed that the rate of 0.75% above the ECB Repo rate should be applied.

On the issuing of the erroneous letter of 2008 the Ombudsman stated that it would be in the Society's best interest to extend a very high level of service and customer care to customers with mortgages of this size.

He also considered that the Society should review if cases similar to this one had arisen or may arise in future and if so, he considered that the same approach be applied. For that reason he copied his Finding to the Financial Regulator for any action it deemed appropriate to take including industry wide though he noted that other providers specified in detail what rate would apply at the end of a fixed rate period.

No breakage fee to be charged on exit from fixed rate mortgage

The Complainant has a fixed rate mortgage. In early January 2009, she contacted her mortgage lender, another building society, seeking clarification as to whether a breakage-fee would be applied to her mortgage account if she elected to change from a fixed to a variable rate of interest. She stated that she was advised that there was no breakage-fee applicable to her mortgage account and that she would have a specified number of days to avail of this breakage-fee of €0.00. When she elected to proceed with the change from fixed to variable, she was advised that there was in fact a breakage-fee of €20,000 applicable. Naturally in her complaint to the Ombudsman she wished to have the offer of the original no breakage-fee applied to her mortgage account, she felt there was insufficient information provided to her initially about a breakage fee and she wanted to avail of the savings offered by switching to a variable rate of interest mortgage.

Following a review of the evidence the Ombudsman noted that it was indisputable that the mortgage lender provided the Complainant with incorrect information in early January 2009. The Ombudsman also noted, with surprise, that the mortgage lender initially justified the application of the then breakage-fee on the basis that the Complainant did not submit a written request to avail of the original no mortgage breakage-fee. The Ombudsman was cognisant of the fact that it was only upon the referral of the matter to his Office that an accurate account explaining the reason i.e. human error, for the incorrect breakage-fee quotation was given. The Ombudsman found that the mortgage lender's responses to the Complainant which pre-dated the referral of the matter to his office were inadequate and unsatisfactory. While the Ombudsman accepted that the mortgage lender eventually made its position clear, there was an obligation on the mortgage lender from the outset to provide the Complainant with full information in relation to the provision of an incorrect breakage-fee quotation.

As regards the application of a breakage-fee the Ombudsman was satisfied that there was sufficient information on the face of the fixed rate application form to have properly informed the Complainants of the consequences of incurring a breakage-fee. He noted that the language used to describe the break-funding fee in the fixed rate instruction form was both clearly constructed and adequate to describe the salient features of the break-funding fee. The Ombudsman also stated that there was no room for negotiation on the costs involved as to reduce any breakage fee would result in an immediate and ongoing loss for the mortgage lender.

However, the Ombudsman noted that the Complainant did accept the original breakage-fee quotation of €0.00 as provided to her in early January 2009. He was satisfied that her acceptance of that offer occurred within the time-frame which was prescribed by the mortgage lender. It was unfortunate for the mortgage lender that the figure quoted had been incorrectly calculated, but having put that offer to the Complainant, it was open to her to accept the notified breakage-fee, as long as she did so within the prescribed acceptance period. Accordingly in considering the circumstances of this dispute, the Ombudsman had to determine what was fair and reasonable.

While the Ombudsman accepted that the mortgage lender made a genuine mistake and/or improper misrepresentation, nevertheless the Complainant acted in good faith and within the prescribed time period. He therefore directed that her mortgage account be immediately switched from the fixed to the variable rate (back-dated to January 2009) and he also awarded her €1,000 for the distress caused for reneging on the offer made.

€7,000 award for breakage fee conditions on fixed rate mortgages not clearly stated

A husband and wife who complained to the Ombudsman had two mortgages with a Bank. In January 2009 they sought possible breakage fee figures from the Bank in order to redeem their mortgages and switch to another provider as the Bank did not offer the type of mortgage they then ought. The Bank quoted a zero breakage fee for both mortgages. The Complainants later telephoned on two further occasions and were also quoted a zero figure breakage fee in redeeming their mortgage. The Complainants went about redeeming their mortgage on this basis in February 2009.

However subsequently, the Bank maintained that as the Complainants did not accept the breakage fee quoted by the Bank within twenty days, the offer no longer stood and the Complainants were liable to breakage fees of €7,000 for both mortgages. The Complainants strenuously argued that they were told on numerous occasions that there was a zero figure breakage fee on both mortgages and in fact were never told that there was a twenty day period to accept this. The Complainants paid the breakage fee on one of the mortgages, €3,000, but could not get their title deeds on the second mortgage in the absence of paying the fee.

The Ombudsman accepted the Bank's argument that due to a change in interest rates the breakage figure quoted to the Complainants no longer stood and the Bank had to charge the Complainants a breakage fee. However the Ombudsman found that at no stage did the Bank make the Complainants aware that a twenty day period applied to accept the zero breakage fees quoted. The first occasion the Complainants were made aware that a twenty day period and indeed a substantial breakage fee applied was when they contacted the Bank requesting official redemption figures in the middle of February 2009 when they were in fact switching the mortgages. The Ombudsman found that given the fact that the Complainants sought breakage figures during times of financial uncertainty and who evidently wanted to avail of cheaper rates, the Bank should have ensured that the Complainants were aware that a twenty day period existed to accept the zero figures.

The Ombudsman consequently upheld the complaint and directed the Bank to refund the breakage fee applicable in respect of the first mortgage account, waive the breakage fee in respect of the second mortgage account and return the title deeds.

Alteration to Investment Mortgage rate was wrong

In separate complaints about mortgage rates against a Bank three Complainants stated that at the time their mortgages on investment properties were agreed and drawn-down, the Bank only offered one mortgage reference rate, which was applicable to both home and investment loans. They stated that the interest rate applicable on the contractual loan letters clearly stated *'Rate of Interest'* is *'a variable rate'*. However in early 2009 they received a letter in which the Bank stated its intention to re-name the existing mortgage accounts and the mortgage rate. The Complainants stated that their *'Investment Mortgage'* then became subject to an *'Investment Mortgage Rate'* which was a significantly higher rate than the original standard variable home loan rate. They were of the view that the Bank acted unilaterally and without reference to any legal authority or pursuant to any contractual clause.

In considering these cases, the Ombudsman noted that the Complainants availed of the Bank's investment mortgage as they were aware that interest rate reductions which would be passed on to home loan/residential mortgages would also be passed on to their investment mortgages . The relevant interest rate reduction would be applied to the standard variable rate which was the reference rate applicable to the home loan/residential mortgages and the Investment mortgages. When the Bank applied a reduction in interest rates to the standard variable rate, it had the effect of also benefitting the Complainants' investment mortgages as the applicable interest reference rate was reduced. He was of the opinion that the Complainants had a fair and reasonable expectation that the original benefit of passing on rate reductions to both home-loan/residential mortgages and investment mortgages would continue for the term of the loan given that this was the primary reason for availing of the Bank's investment mortgage. Indeed up until early 2009 they had received the benefit of such interest rate reductions.

As regards the Bank's suggestion that it needed to manage the credit risks and pricing for the two different loan types, the Ombudsman was of the view that this matter should have been addressed in advance of sanctioning the Complainants' investment mortgage and could not be retrospectively reassessed post draw-down of the mortgage. He was of the view also that the Complainants' original investment mortgage agreement had been fundamentally altered by the Bank's decision to apply a more favourable interest rate regime to home-loan/residential mortgage borrowers as the Complainants' investment mortgage was sold to them on the basis that their investment mortgage account would also receive any interest rate reduction applied to the standard variable rate. Whilst interest rate reductions may have been originally aimed at home borrowers, it was nevertheless the case that the benefit of interest rate reductions also had to be passed on to the Complainants' investment mortgage account as it was subject to the standard variable rate which was the rate to which the interest rate reduction would be applied.

In short, up until early 2009, the Complainants as investors benefitted from interest rate reductions and had a legitimate and reasonable expectation that this would continue. Therefore, the Ombudsman directed that the Complainants' investment mortgage interest be calculated in accordance with the Bank's home loan rate and the Bank was to back-date this change to early 2009 so as to rectify the consequences of the conduct complained of.

Stockbroker's inappropriate investments merits awards of €125,000

The Ombudsman made separate findings against a stock broking firm regarding the sale of high risk property investment products to two unrelated complainants. The investments totalling €330,000 were a disaster and lost their total value.

In one case the investor, who was nearing retirement, was classed as a low risk investor while in the other case the investor was classed as a medium risk investor. It was alleged that the firm had a conflict of interest as it was also promoting the particular funds. The Ombudsman noted that the investors had been sent the brochures and signed the necessary forms before the stockbroker made the investments.

While the Ombudsman noted that the investment brochures clearly stated that they were high risk investment nevertheless he found it disquieting that such products were offered to both investors given their particular risk tolerance classification. In the circumstances he considered that the investors themselves had to bear some responsibility but he directed that 30% and 60% of the losses incurred, be made good to the medium and low risk investors respectively- in total €125,000.

He brought this matter to the attention of the Financial Regulator as he was particularly concerned about the firm's practices. Similar type products may have been part of other investors' portfolios and the Ombudsman was conscious that in some instances the firm was operating other clients' accounts in a private discretionary manner. In those circumstances the firm would not need the investors' instructions before buying or selling investments. Indeed for one of the complainants such an agreement was in place but, interestingly, the Ombudsman noted that the firm had nevertheless sought his permission, even thought it was not necessary, before it made the investment as otherwise it would have breached the terms of engagement.

Move of €100,000 pension policy to secure fund not carried out - €21,000 award

The Complainant purchased a pension policy with an insurance Company in 1990. The policy was placed in a managed fund with the Company. The value of the policy as of March 2007 was approximately €100,000. By June 2009 it had fallen to just over €70,000. The Complainant brought her complaint to the Ombudsman as she stated that during a meeting with the Company's financial advisor in March 2007 she specifically requested that the policy be placed in a secure fund where the policy's value was guaranteed. She stated that she requested this as she was nearing retirement age and was happy with the value at the time. The Complainant also argued that she contacted the Company's financial advisor several times during the 18 months after March 2007 and at all times queried the value of her policy and why it had not been moved to a secure fund. She requested that the Ombudsman direct the Company to increase the value of the policy to at least €100,000, i.e. its value as of March 2007.

The Company contested the Complainant's submissions and stated that the financial advisor had no record of the Complainant's request to move the policy to a secure fund. It pointed out that any request would have to be made in writing. In investigating the complaint, the Ombudsman requested all documentary evidence relating to the Complainant's policy, telephone call records and a signed statement from the financial advisor giving his recollection of meetings / communication with the Complainant. The Ombudsman after considering these held a sworn oral hearing as there was an issue of fact in dispute between the parties which could not be resolved fairly without hearing both sides. The Ombudsman acknowledged that, as the Complainant and financial advisor were neighbours, most meetings were carried out in an informal manner, usually at the Complainant's home. He concluded that there was a genuine misunderstanding between the parties involved as to the Complainant's request to move her pension policy into a secure fund. He noted that any such request could only have been carried out in writing but he also acknowledged the particular circumstances of the case and the informal nature of meetings between the parties from March 2007 onwards.

The Ombudsman noted that the value of the policy had fallen by approximately €30,000. Taking into account the circumstances and conflicting submissions, he directed the Company to increase the value of the Complainant's policy by 70% of the amount by which it had fallen.

€6,500 for incorrect statement to pensioners about immediate access to investment

In early 2006 a retired couple, in their late 60s, invested €15,000 of pension funds in an Insurance Company's long term Commercial Property Fund. In mid January 2009, when they got their annual statement, they noticed that it had decreased from €18,100 in January 2008 to €10,800. The Complainants concerned that their original investment of €15,000 was falling dramatically, contacted the Company to immediately cash it in. However they were advised by the Company that it had a six month encashment and switching restriction clause and therefore, they would be unable to receive their funds for a further six months - in fact in February 2008 a restriction for amounts in excess of €100,000 was introduced but by September 2008 this was extended to all amounts. By May 2009 the surrender value paid to them was just €7,200. They complained that the deferment should not have taken place and that the Company return the value of their original investment without further charges.

The Ombudsman found that there was nothing untoward in the decrease in the Company's Commercial Property Fund and that the terms and conditions provided for a deferment period of six months. Indeed notice of such a deferment was not required to be given to investors under the terms and conditions.

However the Ombudsman had serious concerns about how this Fund was marketed. He found that during the sales process the Complainants were provided with sales literature which stated that they could access their investment at any stage - '*The policy is designed to invest your money in funds, the proceeds of which you can receive at any stage*'. Although it also stated specifically that this brochure was to be read in conjunction with the Company's terms and conditions booklet, the Ombudsman found that the statement was totally ambiguous and unacceptable. As it later transpired the Complainants could not receive the *'proceeds at any stage'*.

Accordingly the Ombudsman found that at a minimum the inclusion of a further note at the end of this statement, clearly drawing attention to the specific deferment condition of the terms and conditions, would have served an appropriate and important purpose. The deferment restriction was a very important caveat even more so given that the Complainants, and any other investor, more than likely would have come across this statement first and relied on it to a fair degree when they were deciding whether the policy suited their needs.

As it transpired the incorrect statement meant that the Complainants suffered a further loss of €3,600 within the six month period. The Ombudsman accordingly directed that the Company pay the Complainants €6,500 for the use of ambiguous language in its literature, the distress caused and the manner in which it dealt with the issue overall. He also directed that the literature be revised going forward so as to avoid any ambiguity.

Credit Union's €100,000 investment to be refunded

Credit Unions can only invest in certain types of investments including ones that are authorised under the Trustee (Authorised Investments) Order 1998 (the Order). A Credit Union in 2005 invested €100,000 in an investment Bond on foot of financial advice provided by an Investment Intermediary. The Bond subsequently lost a lot of its value – by July 2009 it was only worth €3,000. The Complaint was that the Intermediary should not have recommended that the Credit Union purchase the Bond, *(a)* because the Bond did not comply with the Order and *(b)* because the Company misrepresented the Bond and failed to disclose relevant material information, which showed that the Bond was not suitable for a Credit Union.

The Intermediary stated to the Ombudsman that its dealings with the Credit Union were solely with the Manager and its then Chairman, it never at any stage met with the Board and as far as it was aware there was no Investment Committee in place at the time. It also stated that its arrangement with the Credit Union was to make it aware of suitable investment opportunities and it regarded the Credit Union as an institutional investor capable of deciding what investments it should invest in. The Intermediary was advised by a senior bond trader that the Bond fell within the provisions of the Order and that it received written confirmation to that effect from a firm of Stockbrokers. The Intermediary also stated that the Bond was a special purpose vehicle issued by a German Bank.

The Ombudsman noted that in its correspondence both with the Credit Union and his Office, the Intermediary based its view that the Bond did comply with the Order on representations made to that effect by Stockbrokers. It provided an April 2005 letter to it from the Stockbroker as evidence of this which stated inter alia: *"As an experienced fund manager (but obviously not a lawyer), I would feel comfortable that the instrument complies with [the Order]…"* The Ombudsman believed that the words *"but obviously not a lawyer"* undermined the opinion that followed and rendered the advice redundant. The Ombudsman also noted that the Financial Regulator had confirmed that the Bond issuer was not an authorised credit institution for the purposes of the Order.

Accordingly the Ombudsman found that the Bond was not an authorised investment and upheld the Complaint. Having upheld the first aspect of the complaint it was not necessary to consider the second aspect about misrepresentation. He directed the Intermediary to refund €100,000 to the Credit Union.

€10,000 to Credit Union for loss of €28,000 in €130,000 life policy

A complaint was made to the Ombudsman that a Financial Adviser should not have recommended a €130,000 life assurance policy investment to a Credit Union in 2007 as it did not comply with the applicable regulatory standards. The Credit Union argued that life policies were removed from the permissible investments which Credit Unions could make by the Registrar of Credit Unions in October 2006. Following a review in 2008, the Credit Union had to cash in the policy thereby incurring a loss of €28,000. The Credit Union stated that it relied upon the Financial Adviser to ensure that any investment recommended would be suitable and also argued that it was entitled to place such reliance by the regulatory standards imposed on investment advisers, in particular the Consumer Protection Code.

The Financial Adviser however stated that he did not initially recommend the investment product and that the Credit Union received the application form and other information about the product directly from the Underwriter. The Ombudsman noted that in effect what the Financial Adviser was arguing was that his input was not advice based in its fullest sense. However, where advice on an investment product is not required this is referred to as a *"non advice based sale"* or *"execution only"*. This arises where the Adviser is only providing a service of executing an order from the customer and where no advice is provided to the customer about the product. In such instances an Execution Only document is used by Financial Advisers. This Execution Only document would be signed by the Investor to the effect that he or she was going ahead with the transaction on a non-advice (execution-only) basis.

However the Ombudsman found that there was no such document and he stated that it would have been prudent for the Financial Adviser to record in writing for the Credit Union what he knew relative to the product and the Guidance Note from the Financial Regulator. That said, the Ombudsman was satisfied that the Credit Union itself was familiar with the regulations which governed it when taking out the investment in question. A positive response from the Credit Union was noted to the following question put to it later by the Financial Regulator *"Was the board / investment committee aware of the Guidance Note on Investments issued by this office in October 2006?"*

Indeed it was clear to the Ombudsman that the Investment Committee of the Credit Union, when making its decision to invest in the product, was aware that the investment product was possibly outside the Regulator's guidance. He noted that the Manager of the Credit Union had stated that she had voiced her concerns to the Chairperson of the Investment Committee. This sensible advice was rejected as she was told that she was not a Financial Adviser and that the Financial Adviser in question was employed for giving such advice. In those circumstances the Ombudsman held that there was a responsibility on the Credit Union, knowing what it was told by its manager, to have at a minimum made further enquires but he found no evidence of this.

The Ombudsman accordingly found that both parties had responsibilities relative to establishing the suitability of the investment product and its conformity with the 2006 Guidance Note on Investments. For its lapse in that regard the Financial Adviser was to pay the Credit Union €10,000 in full and final settlement of the dispute.

€100,000 award for lost Land Certificate

A man, who agreed to sell a parcel of land for €225,000, sought the Land Certificate, which was in safe keeping, from his Bank. He had purchased another property in anticipation of a successful conclusion of this sale. Following ongoing communication between the parties, over a period of two months, the Bank acknowledged that it had lost the Land Certificate. Although the Bank then moved swiftly to assist the Complainant in procuring a duplicate Certificate, nevertheless three months later, the sale of the land fell through. Seven months later, i.e. ten months after the Bank had confirmed the loss of the original Land Certificate, duplicate title deeds became available. The Complainant sought compensation for the losses he had incurred on both transactions.

The Bank maintained that the sale could have fallen through for any number of reasons and it denied that the reconstitution of title had been responsible for the loss of the sale.

The Ombudsman accepted that the sale might have fallen through for any number of reasons, but he noted that the negligence of the Bank had given rise to the need to reconstitute title, with the consequent delay in closing the sale. In the Ombudsman's opinion, the evidence showed that the reconstitution of the title had been considered by the purchaser's solicitors as a significant and important factor. The Ombudsman was satisfied that the Bank's negligence had caused loss to the Complainant, insofar as the marketability of the land had been impaired by the loss of the Land Certificate. In his opinion the loss which flowed from this negligence, was the profit which the Complainant would have earned in respect of the sale of the property. However, the Complainant's decision to purchase property elsewhere, prior to receipt of the proceeds, was a matter entirely for the Complainant himself and not a matter for which the Bank could be criticized. He was critical of the Bank however as to the manner in which it had dealt with the Complainant's grievance which had been neither timely nor professional and in his opinion had displayed a significant lack of perception.

In all of the circumstances, whilst the Ombudsman took the view that it was not appropriate to direct payment to the Complainant of the full amount of the loss of the sale, nevertheless he was satisfied that a substantial award of compensation was required for the loss and inconvenience caused. He directed an award of €100,000 to the Complainant by the Bank.

Overcharging of insurance premiums for non smokers

The Ombudsman investigated complaints against two insurance Companies about increases in premiums following policy reviews. While he did not uphold these complaints in the course of his investigations he found that the Companies had incorrectly applied *'Smoking Rates'* to the life policies where the holders were in fact non smokers.

In the first instance, he noted that following the review the Company had started to charge the Complainant a premium to reflect that of a smoker. The Complainant had never smoked and had declared herself as a non-smoker from the outset of the policy. The Ombudsman stated that the Company's ex *gratia* offer of €500 was not enough as the matter would not have been discovered but for his investigation. He awarded €2,500 in compensation. He increased the amount because of other errors made by the Company in the overall policy review exercise. He requested that the Company review all similar cases to identify if any other policies were affected. The Company has since then identified a possible 200 other cases of overcharging for non smokers and its review is continuing.

Following a subsequent complaint made against another Company, the Ombudsman found that the Complainant had been incorrectly charged *'Smoking Rates'* on a Life Assurance policy from its inception. This error was made even though the Complainant had been declared a non-smoker in the application form some twenty years previously. The Ombudsman instructed the Company to refund €1,050 being 20 years of overcharged premiums. A review of all other policies sold by this Company has also been requested by the Ombudsman.

Due to the serious matters raised by these two complaints and implications for the industry in general the Ombudsman referred the matter to the Financial Regulator to carry out a review industry wide.

€1,000 and motor premium waived where Company was at fault in cancelling policy

In January 2007 a grandmother contacted her Insurance Company to add a temporary driver to her motor insurance policy prior to the renewal date of her policy. An additional premium was generated as a result of this mid-term adjustment to her policy. Subsequently, in March 2007 her policy was up for renewal. She contacted the Company in late February 2007 and paid her renewal premium over the phone by credit card. On receipt of this payment the Company issued her with a Certificate and Disc of insurance.

It was later noticed by the Company in April 2007 that the Complainant had not paid the additional premium that was generated by the earlier addition of a temporary driver. The Company took the measure of cancelling her policy back to her renewal date, deducted the amount owed for the temporary driver, and refunded the remainder of her renewal premium back onto her credit card. At no time did the Company advise her that it was cancelling her policy or refunding the remainder of her renewal premium back onto her credit card.

The Company did not request a return of the Certificate and Disc of insurance which would be considered standard industry practice when a motor insurance policy is cancelled. In March 2008 she contacted the Company as she had not received her renewal notice for the forthcoming year. It was only then that she was advised by the Company that her motor insurance policy had been cancelled in March 2007 due to a shortfall in the premium owed.

As she got no satisfaction for concerns she raised with the Company she complained to the Ombudsman in March 2009 as she was appalled that she had been driving without insurance, including collecting her grandchildren from school, for a period of 12 months without notification from the Company.

The Ombudsman was shocked at what happened and he noted that, fortunately, she was not involved in an accident or stopped by the Gardai during this period. He directed the Company to provide cover for the period in question with the premium amount waived. He also felt it appropriate to award her €1,000 for the stress and inconvenience caused by the Company's failure to notify her that her policy had been cancelled. While the Ombudsman accepts that this was an isolated case nevertheless the non notification would have had horrendous consequences if an accident had occurred. All Companies should therefore ensure that cancellations are given proper attention.

Complainant's insurance loss assessor caused unreasonable delay

A claim, made under a Buildings Insurance Policy in respect of damage resulting from a chimney fire in late 2007, was not fully paid by an Insurance Company by December 2008. A complaint was then made to the Ombudsman that the Company had not dealt with the claim in a fair manner. The Complainant had hired her own Public Loss Assessor to deal with the claim. The claim process proved to be protracted in that the Company's Loss Adjuster and the Complainant's Loss Assessor could not come to a mutual agreement on the settlement of the claim. The Loss Assessor felt that the settlement amount offered was not high enough to cover all aspects of the repairs to the chimney. He also felt that he should be allowed supervise the repairs and that a fee should be paid to him in that respect. There was also disagreement about the Company holding back a portion of the settlement figure until such time as the work was completed. All this contributed to a delay in getting the chimney repaired and it appeared that she was not being kept fully informed of developments.

The Ombudsman noted that the original claim received in January 2008 was for €10,800, the Company in late January 2008 offered an amount of €7,200 and following further contact from the Assessor a final offer of €7,700 was made by the Company in late March 2008. The Company also paid an advance of €5,200 then but the Assessor was still not happy.

The Ombudsman was conscious that, while the protracted dispute had been going on for nearly two years solely between the Company and her Loss

Assessor, the damaged chimney had not been repaired. The Ombudsman found it regrettable that both did not have greater regard for the Complainant's position. He was however satisfied that the Company's attempts at settlement of the claim were fair and reasonable as the Company increased its settlement offer and made an interim payment despite the policy specifically stating that: *'no payment shall be made until reinstatement has taken place'*. The Ombudsman noted that the Company did this solely to allow an early commencement of the repairs but this did not happen.

While the Ombudsman could not uphold the complaint he did direct the Company in September 2009 to reduce the retention amount of €2,500 by €1,500, thereby increasing the amount available to the Complainant to effect repairs. He did this solely to get repairs underway as quickly as possible as he felt this matter should have been resolved long ago with reasonable good will on both sides. He was not impressed at all with the actions of the Loss Assessor.

50% award for stolen car valued at €20,000

The Complainant's home was broken into in December 2008 and her car keys were stolen. Subsequently in March 2009 the car itself was stolen and later found burnt out. She submitted a claim in respect of the loss of the car to her Insurance Company but it declined the claim as a condition in the policy provided '*The policyholder shall take all reasonable steps to safeguard the Insured/vehicle from loss or damage and maintain it in efficient and roadworthy condition'*. She disputed the repudiation of the claim for €20,000 and made a formal complaint to the Ombudsman.

In considering this matter the Ombudsman noted a Court judgment which indicated that for a condition of *'reasonable precaution'* not being complied it must be established that the Complainant was *'reckless'*. While the policy required the insured to take *'all reasonable precautions'* he noted that she kept the car in a locked car park and had a steering lock fitted- a Garda report confirmed these precautions had been taken. The Ombudsman recognised that while it may have been prudent of her to have had the locks of the car changed after the keys were stolen in December 2008 he did not find her to have acted *'recklessly'* in not doing so. He felt she had taken reasonable measures to avoid the risk and may not have appreciated these were inadequate. In all the circumstances and having regard to what was fair and reasonable he considered that 50% (€10,000) of the claim should be met.

Credit Union was wrong to release €5,400 from a minor's account

A complaint was made against a Credit Union in relation to the account of a minor, which had been opened by his mother, and in respect of which his mother said that she was the only signatory, and had also been the only contributor. The complaint arose in circumstances where the minor's father had been permitted by the Credit Union to withdraw almost all of the monies held in the account *circa* €5,400. The Credit Union relied on Rule 17 of the Standard Rules for Credit Unions in having permitted the minor's father to make a withdrawal on the account. It also advised that the minor's father was well known to the Credit Union personnel and, consequently, no issue arose in relation to proof of identification, prior to permitting the transaction.

The Ombudsman noted that usually the person who opened an account is the person entitled to make a withdrawal from it. The account opening instructions or similar document usually identifies the party entitled to make the withdrawal. As none of the documents sought from the Credit Union had been provided however, these details could not be conclusively established in this case. The Ombudsman however took the view that the Credit Union had, by implication, accepted the fact that the Complainant's mother had opened the account and it seemed that the Complainant's father had not been expressly identified as a person entitled to make a withdrawal from the account.

The Ombudsman also noted that Rule 17 expressly stated that the signature of the parent or guardian will be deemed sufficient *"at the discretion of the Board of Directors"*. There was no evidence in this instance however that the Board had ever considered the matter and, consequently, it seemed that the Board had not exercised its discretion at all, one way or the other. The Ombudsman took the view that the failure to exercise its discretion was such that the provisions of Rule 17 were not satisfied and consequently, could not be relied upon by the Credit Union to justify the decision to sanction the withdrawal. The Ombudsman directed an immediate refund by the Credit Union of the amount withdrawn to the account of the minor.

Hire Purchase Company's ten day clearance period inequitable

The Complainants were charged numerous *'penalty interest fees'* of varying small amounts on their finance agreements with Hire Purchase Company. The Company allocated ten working days for credit transfers, the method used by the Complainants in paying the finance agreements. The Ombudsman found that this method of applying penalty interest fees for late payment, due to allocating ten working days for credit transfer clearance, was inequitable and needed to be revised.

The Ombudsman accordingly directed the Company to cease this practice forthwith and use the standard financial industry norm of four to five working days for credit transfer clearance. The Ombudsman also directed the Company to pay the Complainants a €600 customer service award.

Change in maternity benefit cover was not an upgrade - Stg£2,000 award

A lady complained in relation to her health insurance policy, as a result of the renewal conditions imposed by the Company after the first 12 months of cover. Prior to renewal the Complainant had benefited from unlimited cover in relation to Routine Maternity, Complications of Childbirth and Complications of Pregnancy (subject of course to a 10 month waiting period). Following her renewal of the policy although she continued to benefit from unlimited cover from Complications of Pregnancy, monetary limits were imposed on the cover for Routine Maternity and Complications of Childbirth. The Complainant was unhappy as she had been advised by the Company that if she wished to increase the monetary limits of the cover for Routine Maternity and Complications of Childbirth she would be subject to a new 10 month waiting period. The Complainant felt that the Company was *"moving the goalposts"*.

The Company pointed out that the renewal of an annual insurance policy constituted a new contract with the policyholder and that the insurer was entitled to re-assess the risk involved and also the terms of the contract upon renewal. The Company explained that the Complainant's policy had been altered upon renewal and that at that point, the Complainant's level of benefits for Routine Maternity and Complications of Childbirth were subject to certain specified limits. It was open to the Complainant however to seek to upgrade her policy, subject to Underwriting and, in that event, the Complainant could benefit from higher monetary limits for the benefits in question. The Company pointed out however that it is standard industry practice that once the risk is heightened by virtue of an increased benefit being chosen, an appropriate waiting period would be applied, in this instance a period of 10 months.

The Ombudsman noted that the Company's Policyholders were on notice from the Benefit Guide that *"a waiting period also applies to any extended cover"*. He also noted that Insurance Companies are entitled to re-assess the risk involved and to alter the terms of the contract upon renewal and the Policy Document in this instance contained a clear condition allowing the insurer to re-assess cover and make changes affecting premium, terms of payment and indeed the cover itself, upon renewal. The Ombudsman found that the Company was entitled to change the terms of the policy at renewal, in a manner which would reduce the level of benefits available to the Complainant. Nevertheless he also found that when the Complainant sought to change her level of cover from the lower monetary limits imposed by the Company upon renewal, to the higher monetary limits offered by an alternative plan, such a change in benefit levels could not reasonably be considered to represent an *"upgrade"* in cover because of the previous unlimited cover she had.

In circumstances where the Complainant had previously undergone the 10 month waiting period for an unlimited level of benefits, the Ombudsman was firmly of the opinion that the Company was not entitled to require the Complainant to be subject again to a further 10 month waiting period for what was, in effect, a reduction in the limit of the benefits, rather than an upgrade. The Ombudsman accordingly directed that, at the Complainant's election, the Company retrospectively change the Complainant's cover to the alternative plan available, subject of course to the payment of the higher premium amount, without the imposition of a 10 month waiting period for the Routine Maternity benefits or the Complications of Childbirth benefits. The Ombudsman also directed a compensatory payment to the Complainant in the sum of Stg£2,000.

€2,000 for sale of mortgage protector policy which did not apply after age 65

A complaint against a Bank and an Insurance company related to a Mortgage and a Mortgage Repayment Protector Policy taken out in 2002. The first complaint was that the Complainant believed the mortgage which was to run until his 75th birthday was inappropriate and should not have been sold to him. The second complaint was that when a sickness claim was made under the repayment protector policy the Complainant was found not to qualify as cover had expired on his 65th birthday.

On the first ground of complaint, the Ombudsman noted that the Bank's policy was to ensure that where a borrower would exceed the age of 65 years prior to the natural expiry date of the loan he/she was required to have sustainable income to maintain payments of the mortgage, thereafter. The Complainant was self employed at the time of the mortgage application and his personal debt was paid through the company accounts. Based on this, and the strength of the accounts, the Bank decided that the customer's request was reasonable and the loan proceeded to age 75. Accordingly the Ombudsman found that *(a)* the Complainant must take responsibility for the fact that he sought the loan facilities from the Bank, and was satisfied to accept the offer of a 15 year payment term in the knowledge of his age and *(b)* the Complainant met the Bank's criteria relating to underwriting requirements for mortgages belonging to borrowers over the age of 65.

With regard to the second ground of complaint the Ombudsman found that the policy provisions were clear as to when cover ceased i.e. on the policyholders 65th birthday. Therefore, the Complainant did not meet the policy criteria for cover at the time of his claim or subsequently. The Ombudsman also discovered that a system for notifying the policyholder of the ending of cover when he reached 65 years of age did not operate. He stated that it was not good enough that both the Bank and the Insurance Company, each blamed the other as to who should have notified the Complainant of the cessation of cover at age 65 . He found that both the Bank and the Company had the information available to be aware of this fact, i.e. the Application Form clearly set out the Complainant's birth date and indeed the Repayment Protection Cover was not obligatory. Having regarded all of the circumstances of the case the Ombudsman directed that compensatory awards of €1,000 were to be paid by both the Bank and the Company.

Non payment of €625,000 life assurance death benefit by company was correct

A complaint relating to the non payment of a death benefit claim under a Life Assurance Policy where the sum assured was €625,000 was received by the Ombudsman. In 2003 the life policy of an assured person had lapsed due to the non-payment of premiums by him. The Company agreed to reinstate the policy later that year, but subject to the completion of a Declaration of Health by him. The Company set out a number of questions on the Declaration of Health Form relative to his health over the period since the original cover was put in place. On this Form the Company also warned of the need to make a full disclosure of all material facts. In 2008 he sadly died. His widow duly made a claim for the death benefit under the policy. The Company turned down the claim on the ground of non-disclosure by her deceased husband of material facts relative to his health history. It was the Company's case that had it been made aware in 2003 of his health history it would not have reinstated the policy then.

The issue for adjudication by the Ombudsman was whether there had been a full disclosure by the deceased policyholder of all material facts on the Declaration of Health Form and whether the Company acted in a reasonable manner.

The principal characteristic of an insurance contract is that it is a contract of utmost good faith; both the insurance company and the person looking for insurance must exercise utmost good faith in their dealings with each other. If the person looking for insurance fails to disclose circumstances which would influence the decision of the insurance company in fixing the premium or in determining whether or not to accept the risk, the insurance company may be entitled to decline liability under the policy.

On an examination of the medical evidence and the answers to the questions set out by the Company on the Declaration of Health Form, the Ombudsman noted that the deceased had not disclosed attendances with his GP and a number of Medical Consultants in respect of medical complaints in the years preceding the signing of the Form. In particular, the Ombudsman noted the non-disclosure of an attendance by him with a Consultant Physician in relation to a serious health problem just two weeks prior to the completion of the Form. The Ombudsman found that the consequence of not detailing all material facts was clearly set out both in the Policy documentation and the Declaration of Health Form signed by the deceased i.e.: *"failure to do so may invalidate a future claim"*.

While mindful of the sad circumstances leading to the claim, the Ombudsman found that on the evidence submitted the Company was entitled to repudiate the claim on the basis that all material facts were not disclosed.

€1m investment complaint not upheld

A couple in their early seventies made two investments in 2006, each in the sum of €500,000, in medium risk and high risk investment products respectively. They complained to the Ombudsman that they had been assured by an Insurance Company at the time of the inception of the investment policies, that their first investment would have the benefit of a capital guarantee and that their second investment was a low risk proposition. It was noted in the autumn 2009 that the value of the policies had fallen, and together totalled less than €600,000. This represented an enormous loss to the Complainants, who sought to recover those losses from the Company. The Ombudsman considered not alone the contents of the documentation which the Complainants had signed in 2006, at the time of placing the investments, but other issues such as that they did not need access to the funds for at least five years and that they were prepared to take some risk with capital.

He was satisfied with respect to the first investment, that it must have been clear to the Complainants at the time of investing their monies, that the investment policy offered no capital guarantee. He was also of the opinion that there was no evidence to support the Complainants' contention that they were investing in a guaranteed product. With respect to the second investment made in late 2006, he took the view that the evidence did not support the Complainants' suggestion that they had been led to believe by the Company that their second investment was a low risk venture.

The Ombudsman also noted that, after making these investments of €1m in 2006, the Complainants had very substantial funds of almost €900,000 still remaining on deposit, and available to them in the event of any emergency needs.

He accordingly found on the evidence presented in relation to the parties' dealings in 2006, that the complaint against the Company could not be upheld.

€4,000 award against Insurance Company for poor treatment of unemployed man

A man who held borrowings from a bank became unemployed and claimed on a loan protection policy. The claim was admitted, but the Insurance Company required the man to submit a form every month, signed by his Social Welfare office, confirming his continuing unemployment. The individual brought the complaint owing to the difficulties he faced every month in having the form signed, because the form in question contained no explanation of why it was required, and failed to include any option for the certification of his receipt of Job Seeker's Allowance, as distinct from Unemployment Benefit.

He was also annoyed that on a number of occasions he had been penalised financially, because the form could only be signed by the Social Welfare office on 27th of each month, and the insurer was unable to receive and process the form in order to issue the benefit payment, in sufficient time to meet the liability to the man's bank on 28th of every month. His credit rating was being affected as a result. The Company had failed to offer the Complainant any assistance in relation to this aspect of his concerns.

The Ombudsman noted that the Insurance Company had failed to respond to the Complainant on numerous occasions when he had sought to bring his concerns to its attention. Moreover, it had also failed to engage with the Ombudsman's office in respect of the investigation of the matter, and had failed to respond to the queries raised, or to furnish the documentary evidence sought. Because of this the Ombudsman decided to determine the case, after warning the Company on two occasions, on the basis of documentation submitted by the Complainant including correspondence from the Company to the bank.

The Ombudsman agreed with the Complainant that the monthly form was not adequate for the purpose required, and he noted that the form did not as much as bear the insurance company's name upon it. He rejected the Company's position that the form "*works well in most claim scenarios*". On the evidence available, he also accepted the Complainant's case that he had, through no fault of his own, repeatedly incurred penalties, arising from the late payment of the monetary benefit by the Insurance Company.

The Ombudsman directed the company to pay €4,000 to the Complainant by way of compensation for the wholly inadequate and unprofessional level of service provided to him and the degree of inconvenience caused. He also brought the matter to the Financial Regulator's attention.

€22,000 travel insurance cancellation claim upheld

A person who in May 2008 booked a two week foreign family holiday for January 2009 paid the balance in November 2008. Before booking the holiday he made inquiries with his legal team as to when a Supreme Court hearing involving him was likely to take place and he was informed that it was unlikely to arise till after February 2009. He cancelled the holiday because in mid December 2008 he got notice that the court case was set to be heard in January just a few hours after his scheduled return from abroad. He submitted a holiday cancellation claim under his travel insurance policy which the Insurance Company repudiated on the grounds that the court case was not due to occur during the scheduled trip dates, but after his return. The Complainant argued that he could not realistically arrive back from holiday just hours before the court case and he also needed to consult with his legal team. The Company had offered to meet only €11,000 of the €22,000 loss he suffered on cancellation.

The Ombudsman felt that he likewise would not have gone on holidays, nor he suggested would any sensible person in a similar position, because of the risk of a delay occurring preventing a return to attend court. The Ombudsman also recognised the need for a person to be present in the country well before the appointed court date to prepare for the case with his legal team, as is generally the norm. He also noted that when booking his holiday the Complainant would not have been aware of the likely date of the court hearing but he had taken the reasonable precaution to check this with his solicitor prior to booking the holiday.

With regard to the policy wording the Ombudsman noted that it covered a situation where during the period of insurance a policyholder was forced to cancel a holiday as a direct and necessary result of being called as a witness in a court of law. He found that despite what the Company's claim handlers had argued, the policy did not specifically state that the attendance as a witness in a court of law had to happen during the scheduled trip dates.

The Ombudsman found that the Complainant's compulsion to cancel his holiday was in reality a direct and necessary result of being required to be present in Ireland for the court case. He accordingly directed the Company to refund the full cost of cancellation of €22,000 under the policy.

Joe Meade
Financial Services Ombudsman
1 December 2009