

Significant Complaints Decisions

1 January to 30 June 2006

	Page
Credit Institutions	2
Insurance	7
Judicial Review and High Court appeal	12

Joe Meade

Financial Services Ombudsman

25 July 2006

Credit Institutions

Bogus non resident account €900,000 tax settlement complaint not upheld

A customer who had a number of bogus non-resident accounts for a number of years and who ultimately had to pay €900,000 to the Revenue Commissioners in arrears and penalties, complained that the official of the bank concerned had told her, when she enquired about the tax amnesty that “*she could have nothing to worry about*” regarding the bogus non-resident accounts, and “*not to bother about the amnesty*”.

After his investigation the Ombudsman came to the conclusion that it was highly unlikely that the bank gave any such advice in relation to the eight bogus non-resident accounts which the Complainant held. The Ombudsman held that even if the Respondent Bank had been actively involved in assisting and facilitating such tax evasion, **public policy would preclude any finding that the Bank owed a duty of care** to the Complainant to guide her in her decision as to which of two options she should follow, one of which was clearly illegal. The Ombudsman found that there was no sustainable negligent advice or failure in duty of care, and accordingly the complaint was not upheld.

An 89 year old woman’s investment of €500,000 in a Building Society was made under a mistaken impression - €4,000 award

The suitability of an investment product sold to a woman was the subject of a complaint by the Executors of the estate of the woman who subsequently died. In 2003 when the woman was 89 she re-invested the sum of €500,000 in a secure investment for a period of five and a half years. She did this on the advice of a friend of hers who claimed to have investment knowledge and advised her accordingly.

The Building Society concerned admitted in reply to the Ombudsman that it had reservations about the suitability of this product for this lady and told the lady’s advisor accordingly. The main reservation was that the investment was a five year investment

and the value would be “locked in” to the end of five years. If the customer died within the five years then the original investment only would be repaid and none of the locked in value would be paid out. Notwithstanding these danger signals, the investment went ahead.

The Ombudsman found it difficult to comprehend why the person advising the investor considered this particular product to be suitable, being locked in for five years and offering no income whatsoever over that period. Nevertheless, the Ombudsman took the view that **although the Building Society had expressed reservations, it should have gone further**, and in the Ombudsman’s view it had a duty to warn the customer that if she died before the maturity of the Fund, there would be no return whatsoever achieved on the investment. The Building Society did not do this and the customer was under the mistaken impression that a certain element of growth, which had already been locked in, would be paid out to the Deceased’s estate.

The Ombudsman found that while the Building Society had partly failed in its duty of care, nevertheless the person advising the elderly lady had contributed to the situation. Though the “locked in” increase in value on the day of the death of the lady was €10,439 the Ombudsman directed in the circumstances that €4,000 compensation be paid to the estate.

**Bank letter about a customer’s overdrawn account was sent to the wrong address-
€4,500 compensation**

A letter written by a bank concerning a customer’s overdrawn account was placed in an envelope bearing the incorrect address and was opened by an unknown third party and forwarded to the Complainant.

The Ombudsman found that there was a breach of duty of care owed by the Bank to the Complainant in sending letters concerning his personal details to somebody else. The Ombudsman was satisfied that the letter in question was opened by a third party and that

it would indeed have caused embarrassment and annoyance to the Complainant. (It was not known who exactly had opened the envelope and forwarded it to the Complainant).

The Ombudsman upheld the complaint and awarded the sum of €4,500 in compensation for breach of confidentiality.

Wrong credit rating record for a twin brother results in a €2,000 award

A customer who applied for a finance loan to buy a new car was refused a loan and was advised that there was a problem with his credit rating. This surprised him, as he was not aware of any default on his part. Having enquired at the Irish Credit Bureau, he discovered that he was recorded by the Bank in question as having defaulted on a loan, when in fact he had never had, or sought, any borrowing from this Bank previously. Further enquires revealed that the loan which had been defaulted on had been a joint loan taken out by the Complainant's father and his brother. The Complainant had had nothing to do with it.

The Ombudsman's investigations revealed that the brother who had taken out the loan had the same date of birth as the Complainant as they were twins. It turned out that the Bank, on processing the loan application, **confused the Complainant's records with that of his twin brother.**

The Ombudsman found that the Bank had been negligent in furnishing information to the Irish Credit Bureau which was untrue and defamatory of the Complainant, and had thereby caused him considerable embarrassment when he was refused finance for his proposed car purchase.

The Ombudsman directed that the relevant entry at the Irish Credit Bureau be amended by the Bank so as to show the true position. He also awarded €2,000 in compensation as a person's credit rating is an important personal attribute.

Part of an elderly widow's €1.5 m. Investment Portfolio was mismanaged by a leading stock broking firm - €18,500 compensation awarded and no further commission to be charged

An elderly customer (in her late 70s) of a leading firm of stockbrokers which managed her overall portfolio worth €1,500,000 complained that the firm had mismanaged her portfolio in that it failed to advise her properly how a particular Bond would operate and that it recommended a number of technology shares when she had made it clear that she did not want any high risk shares to be included.

In respect of the Bond issue, the Ombudsman found that she had been led to believe that she would receive a tax-free income for the ten years of the investment, whereas the income was in fact a repayment of her own money, thereby eroding the capital invested. Furthermore he found that she was **also misled** in that she was not told that any exit from the investment before ten years had elapsed would be subject to a penalty charge of 9%.

The Ombudsman's finding was that **the stockbroker was guilty of negligence and breach of duty to the Complainant in respect of the advice that it gave.**

By way of remedy the Ombudsman directed that the stockbroker should refund to the Complainant all fees charged in relation to the Bond up-to-date (a figure of €17,000) and charge no further commission or fees in relation to the holding of the Bond thereafter. In addition a €1,500 compensatory payment to the Complainant was also directed.

Furthermore the Ombudsman directed that the firm should make arrangements to amend its procedures immediately so as to more accurately describe any deductions for income/charges/commission on the periodic performance statements /valuations of the Complainant's investment.

Mortgage broker negligence results in €2,000 compensation

A complaint of negligence on the part of a mortgage broker who acted on behalf of a mortgage applicant and who made an application to one Provider only instead of more than one was the subject of an investigation by the Ombudsman. The mortgage approval was secured but the Complainant found that the terms were unfavourable. The Complainant then looked elsewhere for mortgage facilities but four months had now elapsed and as a result of the delay the customer was unable to close a property transaction at the agreed time and had to pay an interest penalty of €4,000 as a result.

The Ombudsman found that **while the mortgage broker was negligent in his handling of the matter some of the delay was due to the Complainant herself**. He upheld the complaint and awarded €2,000 compensation.

Alleged misrepresentation of financial advisor fee- partly upheld

A couple paid €1,000 to a financial advisor intending and under the impression that it was to be credited to the loan account which the advisor had negotiated for them. The advisor however dealt with it as a fee to them for their work.

The Ombudsman following his investigation found that **there was some genuine misunderstanding** and that although the Complainants had been misled, this misrepresentation was neither intentional nor fraudulent. The Complainants knew that there would have to be some remuneration for the advisor's work but were under the impression that any such fee would come from the lender. The Ombudsman directed that €500 could be held by the advisor and the other €500 should be returned to the Complainants.

Insurance

Company and intermediary increase offer for death benefit by €43,000 after negotiations with the Ombudsman

The dispute concerned the refusal of a Company to pay a death benefit claim under a Term Assurance policy on the grounds that the cover ceased on the deceased member's 70th birthday. The assured had died two weeks *after* her 70th birthday. The assured had prior to her death received an incorrect letter advising that she was covered for a stated period beyond her 70th birthday.

The Ombudsman found in the particular circumstances of this case that the letter to the assured could not be read as a stand alone document and that an interpretation of same could not be made without reference to the Policy Terms and Conditions which he found were clear regarding the cessation of cover on 70th Birthday. However, he did feel that a payment was justified.

Prior to the complaint being referred to the Ombudsman the Company had put forward a settlement offer of €7,000 to the Complainant. In the particular circumstances the **Ombudsman considered that a larger payment was justified.**

Following communications by the Ombudsman with the Company and the intermediary involved the Company agreed that **a sum of €50,000** should be paid to the deceased's estate. Having regard to all the circumstances of the case the Ombudsman considered that the Company's increased offer was fair and reasonable.

Travel insurance and pregnancy – complaint upheld

The Complainant in this case booked a holiday in early 2004 and purchased a travel insurance policy with the Company two months later. Ten days after purchasing the policy the Complainant was informed by her doctor that she was pregnant and expecting twins. On medical advice she cancelled her holiday six weeks later. She had been due to travel in mid 2004 and her expected date of delivery was late 2004.

The Complainant had submitted a cancellation claim under her travel insurance policy to cover the cost of the cancelled holiday. Her claim was declined by the Company on the grounds that cancellation due to pregnancy was not covered under the terms of her policy unless it was medically necessary as the policy condition stated

“Cancellations because of pregnancy or childbirth where the expected date of delivery is less than eight weeks after your trip ends (or sixteen weeks in the case of known multiple pregnancy) unless the pregnancy was confirmed after the date your policy or travel tickets for your trip were booked and the cancellation is medically necessary”.

The Ombudsman examined the dates of the events in question. It was evident that the **holiday was booked and cover put in place prior to the Complainant’s pregnancy being confirmed.** Additionally the Complainant’s doctor had confirmed that she advised the Complainant of the “need to cancel” ten days after purchasing the policy. The Ombudsman was satisfied in the circumstances that the Complainant’s claim fell within the terms of cover and he upheld her complaint.

Road works business disruption claim could not be investigated

The Complainant ran an interior design business which she claimed was adversely affected by prolonged road works, in particular a large hole, over a period of twenty weeks in front of her premises. She sought to be indemnified by the insurers of the

contractors carrying out the road works but this claim was unsuccessful. The Complainant subsequently contacted the Ombudsman and provided figures in support of her claim for loss of business.

The Ombudsman advised the Complainant that he may only investigate complaints by 'eligible consumers' and drew her attention to Section 57BA of the Central Bank and Financial Services Authority of Ireland Act 2004 which provides that an 'eligible consumer', in relation to a regulated financial service provider, means a consumer -

*"(a) who is a customer of the financial service provider, or
(b) to whom the financial service provider has offered to provide a financial service, or
(c) who has sought the provision of a financial service from the financial service provider."*

In this case, as the complaint related to a third party claim, the Complainant **was not an eligible consumer** within the meaning of the Act and accordingly the Ombudsman could not investigate her complaint.

A motor insurance no claim bonus is not a no blame bonus –complaint not upheld

This motor insurance dispute related to the loss by the Complainant of her 50% no claims bonus following a claim for damage to her parked car caused by an unknown third party vehicle. The Complainant maintained that her car was legally parked and locked, and argued that that it was most unfair that she should be penalised in this way as she did not in any way contribute to the damage and had no responsibility in the matter.

A no claims bonus is a reduction of premium allowed at the time of renewal or quotation stage to an insured that has made no claim affecting the previous period of insurance. It is important to remember that a no claims bonus is not a 'no *blame* bonus'. Once a claim, or potential claim, is notified, the insurer is committed to a potential outlay and the policy

provisions will apply. An insured's no claims bonus will be affected, unless it has been protected against the loss.

A policyholder **may choose to guard against the loss of its no claims bonus** by purchasing 'protected no claims bonus' cover. Depending on the quantum of the claim a no claims bonus when protected is not automatically lost or reduced following a claim under a motor policy. An extra premium is payable by the policyholder for this benefit.

The Complainant in this case did not elect to have this benefit on her policy and accordingly, her claim under her motor insurance cover led to her no claims bonus being affected at renewal.

All reasonable care needed if a claim for a lost purse on a plane is to succeed-not upheld

The Complainant left her purse on a flight when she arrived at her destination in Spain. She reported her loss at the airport, and also to the airline. Her claim under her travel insurance policy for the lost purse and the €700 it contained was declined by the Company on the grounds that she had not taken the normal precautions required under the terms of the policy to secure the safety of her personal baggage. The Complainant disagreed with the Company's claim that she had not taken "all reasonable care" with her purse and felt it unfair to suggest that "normal precautions" to protect her property were not taken. She argued that she had been more than responsible in looking after her purse and reporting its loss.

The Ombudsman accepted that the Complainant had acted responsibly in reporting her loss and in attempting to recover her purse. **However the reality was that she had left her purse unsecured, unattended and beyond her reach on the seat of a plane and other passengers and crew could have had access** to it. He found that in doing this she was in breach of the terms and conditions of her policy and he could not uphold her complaint.

Loss of trust in an insurance company-not upheld

The Complainant had a mortgage endowment policy. He claimed that he was baffled by the figures in his annual statement and had received no clarification from the Company. He felt that his account was poorly managed by the Company and was concerned by the Company's failure to convince him otherwise.

Upon investigation it became clear that the problem in this case stemmed from the Company's failure to implement a premium increase in late 1999. The Ombudsman accepted that the Company had acknowledged its mistake and rectified matters by adding units to the plan at no cost to the Complainant.

However, the ombudsman noted that the Complainant had never felt satisfied on the basis of the annual statements received that the premium error had been corrected. Having examined all the documents submitted in this case, including additional information sought from the Company, the Ombudsman was satisfied that there was nothing untoward in the figures provided.

In reality **the problem in this case was clearly one of loss of trust**. The Complainant no longer had confidence in the Company's management of his account. The Ombudsman noted that he had entered into a mortgage endowment policy with the Company and had entrusted the management of his fund to the Company. Although it appeared that he no longer felt confident about the management of the policy, on examination of the Company figures the Ombudsman found that he could not uphold the complaint.

Judicial Review and High Court Appeal

Judicial Review

The first ever High Court Judicial review proceedings against the Ombudsman were taken by the Irish Nationwide Building Society in January 2006. The Ombudsman had directed the Society in February 2006 to change its practice of charging automatic six months interest when commercial mortgages were redeemed early. He considered that this was not a genuine pre estimate of loss and was in effect a penal charge. **The High Court proceedings were settled in the Ombudsman's favour in May with full costs awarded to him.**

The Ombudsman had also directed in February 2006 that compensation be paid in another similar type case (though it was not the subject of the judicial review proceedings it was part of the settlement terms). However the Ombudsman had to take further steps in June 2006 to ensure that this was paid.

In July 2006 on application by the Ombudsman's legal team the Supreme Court awarded the Ombudsman further legal costs against the Society. This arose as the Ombudsman was represented and submitted affidavits in an *ex parte* appeal taken by the Society, concerning the Judicial Review proceedings, to the Supreme Court in May 2006 which the Society subsequently withdrew.

Appeal to the High Court

An appeal has been initiated by Ulster Bank against a decision made by the Ombudsman in February 2006. Initial legal argument was heard by the High Court on 31 May- at the request of Ulster Bank- as to the scope of the appeal. The judgement of the President of the High Court on this aspect of the appeal is awaited. The appeal proper will then follow.

In his decision the **Ombudsman directed the Bank to pay significant compensation to all** customers who invested in its International Share Portfolio. In effect he directed the Bank to make good a 15% reduction in the value of the Fund (€7.4m) that arose in November 2004. He reached this decision following investigations of nine complaints he received from disgruntled investors about a reduction in their investments following a '*deferred tax asset*' adjustment by the Bank in November 2004. He has also asked the Financial Regulator to review the practice at this Bank (and any other financial service provider who may have operated a similar type investment policy) from a regulatory perspective.

Circuit Court enforcement action

The Ombudsman had to threaten, in May 2006, Circuit Court **enforcement proceedings** against a credit union for failure to pay a €4,000 compensation award made by him in February 2006. The amount was paid a week later without the necessity of Court action.