

Complaints Decisions

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Following the sale of farm for over €1.3m an 86 year old bachelor was advised to invest €850,000 in two 4 and 6 year fixed term bonds; €350,000 was retained in a demand deposit account with a further €150,000 in a current account - inappropriate advice

The Complainants were the Executors of the Estate of the deceased Policyholder who was aged over 86 years on his death in November 2004. The deceased bachelor closed the sale of his farm in early 2004 for a sum in excess of €1.3m. The complaint concerned the subsequent investment policies in insurance bonds (to the value of €850,000) that were recommended by a Bank acting as an Independent Intermediary. No complaint was made regarding €500,000 held in demand deposit and current bank accounts.

The insurance bond policies were effected in February and April of 2004 and were to run respectively for 5 years 11 months and 3 years 11 months. The policies did guarantee a return of capital, but only on maturity. At the date of death of the 86 year old policyholder some seven months later the surrender values were €50,000 less than the sums invested. The Ombudsman noted and appreciated that the Executors wanted to administer the estate in a timely manner and not wait for a further six years when the bonds matured with the guaranteed capital secured.

The Ombudsman's investigation and subsequent findings addressed the issue of whether the sale of the investment products to the 86 years old customer was correctly carried out. The Bank did have in place some measures relative to its sales process (which includes a fact find, the issuance of documentation with cooling-off notice and the accompanying of the Bank's sales manager who was known to the policyholder at the meeting with the policyholder). However, it is the Ombudsman's stated position (see Annual Report 2006) that there is a particular duty of care required when selling a policy to a person of advanced years. If there were not additional safety procedures in place, the sale of particular policies to a person of advanced years may not be appropriate having regard to that person's advanced age, infirmity or other circumstance.

While the Ombudsman noted that there was a warning in an Appendix to letters sent to the policyholder in this case regarding the Death Benefit under the policies i.e. *The value is not guaranteed and could be lower than the amount you invested*, he found that other policy documentation were silent on the important fact that the fund values payable on death could be less than the amount invested.

The only documentation signed by the deceased was the application forms. Given the amount invested and the advanced age of the customer making the application (i.e. 86 years) one would have expected additional evidence of his consent and understanding of what he was entering into. Of particular concern to the Ombudsman in this case was that the deceased was not accompanied by an independent person when the documentation was signed. There was also no evidence of the deceased having had previous experience in investing in financial products other than savings through a deposit account and he noted that this particular investment strategy was not signed off at a senior level, as it should have been.

Having regard to the particular circumstances of this case and considering what was fair and reasonable, the Ombudsman decided that the Bank return the shortfall on the original investments i.e. bringing forward to the date of death the guarantee that would have applied at maturity. The award of return of the shortfall on the initial capital invested - €50,000- was given primarily on the basis that more should have been done by the Bank to ensure beyond doubt the policyholder's satisfaction with what was been advised by it.

In his decision the Ombudsman highlighted to the institution additional (and what would be considered prudent) sales procedures for sales of investment products to customers in advanced years. Additional procedures would be for example: the requirement that a family member or independent professional third party be present (or at least evidence that this was suggested) when a policy is sold and that a senior member of management sign-off on the relevant documentation. A checklist signed by the policyholder is another method that could be put in place as an additional control when advising on investments.

The checklist would indicate that particular focus and attention was given to the following matters when the investment was arranged and would be signed by both parties and approved at a senior manager level:

- product booklet and Customer Information Notice,
- setting aside money for expected and any unexpected short term needs and also for emergencies,
- that the investment is a long term commitment and that there is recommendation that it be held for a minimum of 3 to 5 years,
- the nature and limitations of any guarantees that are included in the product,
- the risk that attaches to the investment,
- any restrictions on encashment,
- any encashment penalties included in the product,
- the fund value payable on death may be less than the amount invested.

Whilst it did not form part of his investigation, as it was not part of the complaint, nevertheless, the Ombudsman was rather surprised with the advice given to the 86 year old customer to leave the balance of his monies i.e. €350,000 in a demand deposit account and €150,000 in a current account. The Ombudsman is aware that elderly people, or indeed other people, may want to leave large amounts in low or no interest bearing accounts while higher interest bearing accounts are available. However he considers that any bank manager and advisor should take all reasonable measures, particularly where very elderly people have a large amount to invest, that only reasonable amounts were so kept in such accounts with the balance in higher interest earning accounts. The managers should also ensure that a person would have ready access to funds in an emergency situation.

The Ombudsman considers that all institutions should, as a matter of routine, review bank accounts of elderly people so that appropriate amounts were held in them; that the lowest or no interest rate perhaps was not the norm. The Ombudsman appreciates that this is a delicate area for financial advisors as people, including elderly customers, can have

definite and private views while being quite clear as to how they invest money but he wants reasonable safeguards and assurances nevertheless. He has raised the matter with the Financial Regulator also.

Payment Protection Policies for construction industry workers

In June 2004 the Complainant took out a vehicle finance loan. In addition to this he took out a payment protection policy as insurance against any loss of employment through redundancy, illness or injury. He commenced new employment with a builder in January 2005 to assist in the construction of new houses. In December 2005 the Complainant's employment was terminated. As a result of this a claim was submitted against the payment protection policy in January 2006. After the Company investigated the matter and liaised with the Complainant's previous employer the claim was repudiated on the grounds that the Complainant had not been in full time employment.

Upon submission of the claim the Company requested specific documents in order to validate the claim. These included the Complainant's P45, letter from previous employer stating that Complainant was in full time employment, proof that the Complainant was in receipt of unemployment benefits and actively seeking employment. The Company stated that the letter provided by the employer was not sufficient to meet the policy conditions. The Company stated that the letter provided was not a severance letter as the Complainant was working on a contractual basis as he was only employed for the duration of the construction of specific houses. The Company also stated that as a result of the Complainant not been employed in permanent full time employment prior to his redundancy, he did not meet the requirements that would have entitled him to benefit under this policy.

The Ombudsman noted that the policy clearly stipulated that the claimant must be in **permanent** full time employment for a period of at least six months prior to the date of a claim. While the Ombudsman noted that the period of employment required was met by the Complainant he did not find that the employment could have been considered permanent. The letter provided by the previous employer clearly stated that the course of employment was only for the duration of the construction of a number of houses and there was no indication that the term of employment would continue after the construction of these houses.

The Ombudsman found that in order for the Complainant to benefit from this policy the insured peril, loss of employment, should have been a fortuitous event and not known to the Complainant. The fact of the matter was that this was not an unforeseen event and the Complainant knew that once the construction of these houses had been completed that he would be without employment. He found therefore that the term of employment could not be considered to be permanent and he did not find in favour of the Complainant on the repudiation issue.

However the Ombudsman held that the product had been mis-sold to the Complainant as the seller should have been, and indeed was, aware of the nature of the Complainant's occupation. He directed that premiums totalling €2,100 were to be refunded by the Company to the Complainant as this contract of insurance had never been of any benefit to the Complainant.

Many employees in the building industry are employed on a contractual basis rather than as permanent employees. Accordingly this problem of mis-selling has further consequences across the building industry in relation to the selling of these products. He referred the matter to the Financial Regulator. The Regulator in response stated that an extensive review by him of sales practices in relation to payment protection insurance was carried out during 2005/6 following concerns raised about the sales practices for payment protection insurance and this was reported on in his 2006 annual report. Issues relating to past sales practices were not considered as prior to the Consumer Protection Code (Code), which came into full effect on 1 July 2007, there were no specific rules in relation to the sale of these products in place. The Regulator had noted from the review that refunds were not made in all cases where it emerged that payment protection insurance had been sold to an ineligible customer and in a letter to the industry in February 2007, directed that, in line with the Code, where policies are inadvertently sold to customers who are ineligible, firms have to have procedures in place to ensure that full refunds are made promptly to customers. As the particular complaint to the Ombudsman concerned a product sold in 2004 the matter fell outside the scope of the Code.

However the Ombudsman considers it is possible that many people in the construction industry may have paid premiums prior to the Code coming into effect, for which, from the outset, they had no entitlement to benefit. The Ombudsman considers that this industry wide problem needs resolution. It is also possible that other people in contract type positions had similar policies which were and are of no benefit to them.