FINANCIAL SERVICES OMBUDSMAN

ANNUAL REPORT 9

Our Role

The Financial Services Ombudsman can investigate, in an impartial and independent manner, complaints from individual customers and small businesses who have unresolved disputes with Financial Service Providers who are either regulated by the Financial Regulator or are subject to the terms of the Consumer Credit Act 1995.

The Act under which the Financial Services Ombudsman was created provides that the Ombudsman must be independent in the execution of functions relating to the adjudication of complaints and decisions of the Ombudsman are only appealable to the High Court.

The Ombudsman can award compensation of up to €250,000 where a complaint is upheld. The role is therefore a quasi-judicial one and whether a complaint can be upheld or not is determined on the basis of evidence furnished, examined and reviewed.

Financial Services
Ombudsman

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Chairperson's Report

This report reflects on what was another very busy and challenging year for the current Financial Services Ombudsman Council which commenced its term on 29 October 2008.

As one of its statutory functions, as prescribed by the Central Bank and Financial Services Authority of Ireland Act 2004, Council appointed the Ombudsman and the two Deputy Ombudsmen in 2005. Thereafter and throughout 2009 the business of the Council related mainly to discharging its other statutory functions which are:

- to prescribe guidelines under which the Ombudsman is to operate;
- to determine the levies and charges payable for the performance of services provided by the Ombudsman;
- to keep under review the efficiency and effectiveness of the Office and to advise the Minister for Finance, either at the Minister's request or at its own initiative, on any matter relevant to the Ombudsman's operation; and
- to advise the Ombudsman on any matter on which he seeks advice.

While the Ombudsman is responsible for the operational aspects of the Bureau's finances, the Council, acting on the advice of the Minister for Finance, has overall responsibility for accounting standards. To that end the Council, with the assistance of the Audit Committee, ensured that Government policy on the pay and conditions of service of the Ombudsman, the Deputy Ombudsmen and all staff members has been complied with, as well as Government guidelines on the payment of Council Members' fees and expenses. The Council noted that the Guidelines for the Appraisal and Management of Capital Expenditure Proposals are being complied with and that appropriate Corporate Governance principles are also reviewed and monitored for effectiveness in application. The Council adheres to the Standards and Ethics in Public Office legislation and has ensured, and will continue to ensure, that the appropriate Statements of Interests are made by both by the Council members and by the relevant staff of the Office of the Ombudsman.

The Council has no role regarding complaints resolution, as this is statutorily the independent function of the Financial Services Ombudsman. However, the Council cannot ignore the constant and not insignificant increase in the Bureau caseload and the complexity of the matters the Ombudsman and Bureau staff has had to consider. Despite these difficulties the overall throughput and the public profile of the office is positive and crucial to providing much needed consumer confidence.

I mentioned last year how Council is anxious to ensure that the expeditious, accessible and informal approach which the Ombudsman is statutorily required to adopt is not replaced by a more formal tribunal styled format. When considering the 2010 budget, Council determined that the charges and fees as set out were as should be necessarily incurred in the normal course of business expenditure of the Bureau. Council was conscious of the need for careful and prudent consideration of the measures to be adopted by the Ombudsman toward ensuring expenditure at a level that was appropriate.

I wish to reiterate my high regard of and gratitude to all of my fellow Council Members. Each gave of their significant expertise with true professionalism and consideration in what was an

especially active, demanding and challenging first year and term. Council has used its best endeavours to ensure that our contributions were relevant, effective and timely and we shall continue in this vein and, wherever possible, enhance them.

On behalf of myself and my colleagues on the Council I would mention how we are appreciative of the significant input of the Secretary to the Council, Jim Bardon.

I also wish to pay tribute to the Minister for Finance and the staff of his Department, for the time and the support to mine, the Council's and Ombudsman's role.

Change is inevitable and as we complete this year the Bureau enters a new period of leadership, management and progress following the retirement of the Ombudsman and his two deputies. I wish to make special reference to the outstanding contributions of the Ombudsman Joe Meade and Deputy Ombudsmen Caroline Gill and Gerry Murphy during their terms of office and, on behalf of Council, wish them well in all of their future endeavours in well earned retirement.

Thanks and congratulations must also extend to the Acting Deputy Ombudsman, Mary Rose McGovern and the heads of administration, investigations and all of the staff for their individual and combined efforts. It has been through those combined efforts and leadership that we have ensured that an effective, progressive and cost-efficient Bureau not just exists, but rather is in increasing demand due to the high regard and position in which it is held by the citizens for whom it exists.

Special mention, thanks and congratulations must go to the interim Ombudsman P.J. Fitzpatrick for his exceptional stewardship of the Bureau during the recruitment process for the new Ombudsman.

I will close by warmly welcoming, on behalf of Council, that newly appointed Ombudsman, Bill Prasifka, and wishing him success and fulfilment in his role. The Council and I look forward to supporting and working with him in our combined commitment to continuous improvement and serving the needs of all who have reason to contact his office.

Dermott Jewell
Chairperson, Financial Services Ombudsman Council

May 2010

The Council

Mr. Dermot Jewell, Chairperson

Mr Jewell (B.Sc. Mgmt. (Law), CIArb.) is Chief Executive of the Consumers' Association of Ireland. He is Chairperson / Director of the Irish European Consumer Centre (ECC), Director of Investor Compensation Company Limited and Hon. Treasurer of the Chartered Institute of Arbitration (Irish Branch). He is Ireland's representative on the Consumer Consultative Group (ECCG) of the European Commission. Mr Jewell is a contracted trainer/lecturer on the Management, Leadership and Finance Modules of the European Commission–DG Sanco Training Projects for consumer organisations.'

Mr. Michael Connolly

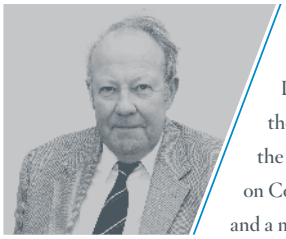
Mr. Connolly (B.B.S. (Trinity College Dublin), F.I.B.) is a Financial Services / Small Business Consultant. He is a Director of the National Asset Management Agency (NAMA) and a Director of PMI Europe Holdings Ltd. He was a former General Manager with Bank of Ireland Group which included responsibility for business banking, credit control, international banking, finance and group insurance. He also served as Chairman of Bank of Ireland Group's Investment Committee and as a Bank Pension Fund Trustee.

Mr. Anthony Kerr

Mr. Kerr is a Statutory Lecturer in the School of Law, University College Dublin. He was called to the Irish Bar in 1989 and is the author of a number of books included The Civil Liability Acts (3rd Ed., Thomson Round Hall, 2005).

Mr. Paddy Leydon

Paddy Leydon is the previous Chairperson of the Credit Institutions Ombudsman voluntary scheme who was subsumed in the Financial Services Ombudsman Bureau in 2005. A Regional Business Manager with Bank of Ireland based in the North West he is a Fellow of the Institute of Bankers in Ireland.



Mr. Paddy Lyons

Mr. Lyons holds a B.A. in Economics and M. Litt in Economic Statistics from Trinity College Dublin. He was a lecturer in Economics in Trinity College from 1965 to 1991. He was a member of the Fair Trade Commission / Restrictive Practices Commission from 1970 to 1991 and Chairman of the Competition Authority from 1991 to 1996. He was a member of the EU and OECD Committees on Competition from 1973 to 1996, a member of the National Prices Commission from 1978 to 1986 and a member of the Financial Services Ombudsman Council from 2004. Mr. Lyons has worked as a Competition Consultant since 1996. He was an External Director on the Board of the Irish Music Rights Organisation from 1997 to 2006.

Ms. Catríona Ní Charra

Ms. Ní Charra was appointed as a member of the first Financial Services Ombudsman Council and was reappointed. She has worked with the Money Advice and Budgeting Service (MABS) for 15 years. She has particular interest in debt and poverty issues, as well as financial literacy. She has worked as an independent researcher and trainer. Ms. Ní Charra also worked for the Health Service Executive (HSE) and the Department of Social and Family Affairs. She was a former Director and Company Secretary of Consumer DebtNet, a European umbrella group for money advice services.

Mr. Frank Wynn

Mr. Wynn is General Manager, Group Compliance and Operation Risk with Irish Life and Permanent plc. He is and accountant (FCCA), an Associate of the Chartered Insurance Institute and an Associate of the Irish Institute of Pension Managers. He is a Council Member of the Insurance Institute of Dublin and a member of the Technical Committee of the Association of Compliance Officers in Ireland.

Mr. Jim Bardon, Secretary to the Council

Mr. Bardon worked in various positions in Bank of Ireland between 1966 and 1988 including Manager Internal Audit and Senior Manager in Group Executive Office. He was Director General of the Irish Bankers Federation from 1988 to 2004 during which time he chaired the Executive Committee of the European Banking Federation for two years. He is Chairman of the Investor Compensation Company Limited.

Function of the Council

The Financial Services Ombudsman Council is appointed by the Minister for Finance. Its main functions are to:

- Appoint the Financial Services Ombudsman and any Deputy Ombudsman;
- Prescribe guidelines under which the Financial Services Ombudsman's Bureau is to operate
- Determine the levies and charges payable for the performance of services provided by the Ombudsman;
- Keep under review the efficiency and effectiveness of the Financial Services Ombudsman's Bureau and to advise the Minister for Finance, either at the Minister's request or at its own initiative, on any matter relevant to the Ombudsman's operation;
- Advise the Ombudsman on any matter on which he seeks advice.

Members of the Council

The Financial Services Ombudsman Council is appointed by the Minister for Finance. In October 2008 the Minister appointed the following as members of the Financial Services Ombudsman Council for a 5 year period.

- Mr. Dermott Jewell (Chairperson);
- Mr. Michael Connolly;
- Mr. Anthony Kerr;
- Mr. Paddy Leydon;
- Mr. Paddy Lyons;
- Ms. Caitríona Ní Charra;
- Mr. Frank Wynn.

Mr. Jim Bardon is the Secretary to the Financial Services Ombudsman Council.

Council Sub-Committees

Audit Committee

Members: Mr. Paddy Lyons (Chairperson), Mr. Noel O'Connell, Mr. Michael Connolly.

Finance Committee

Members: Mr. Paddy Lyons (Chairperson), Mr. Frank Wynn, Mr. Dermot Jewell, Ms. Caitríona Ní Charra.

Remuneration and Governance Committee

Members: Mr. Dermot Jewell (Chairperson), Mr. Paddy Leydon, Mr. Frank Wynn, Mr. Tony Kerr.

Meetings

a) Council

During 2009, the Financial Services Ombudsman Council held 7 formal meetings. Attendance was as follows:

	MEETINGS
MR. DERMOTT JEWELL (CHAIRPERSON)	7
MR. MICHAEL CONNOLLY	7
MR. ANTHONY KERR	6
MR. PADDY LEYDON	6
MR. PADDY LYONS	6
MS. CAITRÍONA NÍ CHARRA	4
MR. FRANK WYNN	7

b) Council Sub-Committees

Audit Committee
Met on 4 occasions

Finance Committee
Met on 2 occasions

Remuneration and Governance Committee
Met on 6 occasions

Council Remuneration / Expenses

The Minister for Finance decides the level of annual fees to be paid to the Council members; €12,600 is paid to each member with €21,600 to the Chairperson. These fees were reduced by 10 percent from 1 April 2009. Claims for reimbursement of travel and subsistence expenses at current public service rates are submitted quarterly.

Ombudsman's Introduction

I hereby present to the Council the fifth Annual Report of the Financial Services Ombudsman for the 2009 year.

2009 in Summary

The office was extremely busy in 2009 as:

- 7,619 complaints were received – a significant increase of 28%;
- 6,255 complaints were concluded. This includes 2,095 complaints concluded after initial referral of the Complainants back to the Financial Service Provider and no further action was required by this Office;
- 3,805 complaints overall were resolved in the Complainants' favour when taking the above figure into account – 61% overall;
- Approximately 25,000 complaints have been received since this Office was set up in April 2005;
- Over 17,000 telephone calls were received while over 200,000 visits were made to the website;
- Statutory levies totalling €5,891,521 were collected;
- IT systems work well and revisions were made where appropriate to the complaints handling systems and administration procedures;
- The administration of the office continues to be highly effective even though it is more challenging to maintain throughput in the current climate;
- It is estimated that conservatively over €60m has been made good to consumers as a result of the Office's work since 2005. The cumulative knock-on effect this work has on the financial industry in getting matters resolved which do not come to the Office is a further major benefit;
- The profile of the office during 2009 was high, not alone from media profile but from the increasing number of complaints and information requests received, as well as dealing with very significant complex matters;
- There were some major High Court Findings in our favour and at year end a Supreme Court judgment was awaited.

General Matters of Concern

During 2009 the following matters were of particular concern and are outlined in detail in the later Sections of this Report.

- Because of the economic downturn, the inability of Providers to pay awards made by the Ombudsman. Consideration should be given to revising the Investor Compensation Company Limited to ensure that where companies have gone into liquidation or are unable to pay awards that this fund should meet it. The matter has been raised with the Financial Regulator and the Department of Finance;

- Accountants, solicitors and other investment advisors are not subject to the Ombudsman's remit. Representations have been made to the Department of Finance and the Financial Regulator on this matter;
- The activities of the Office must be carried out in private. The views of the Department of Finance have been sought about providing statutory protection to the Ombudsman where he may name providers, if he considers it in the public interest to do so;
- The judgment delivered in the High Court on 27 August 2009 was of particular significance. It clarified in detail the role of the Ombudsman, that it was for him to decide whether or not to investigate a complaint and how remedies proposed were to be effected;
- Concerns about how stockbroker's private discretionary accounts are operated were brought to the attention of the Financial Regulator.

Funding

The Office is funded by statutory levies on Financial Service Providers. The Office's running costs for 2009 were €5,131,945. Collection of the levies was satisfactory. Running costs were kept under very tight control.

International Conference

During 2009, the Office hosted the annual conference of the International Network of Financial Services Ombudsman Schemes. It was a very successful Conference and valuable insights were gained during the two day Conference.Strategy Statement.

In 2009 a new Strategy Statement for the next three years was due to be completed. However, because of uncertainties as to the future role of the office, it was not possible to finalise it. In early 2009 it was indicated that the Office might be merged with the Financial Regulator and following the publication of the Report of Special Group on Public Service Numbers and Expenditure Programmes (McCarthy Report) in July 2009 it was also indicated that the Pensions Ombudsman might be merged with this Office. The draft Strategy Statement was submitted to Council for consideration in December 2009.

Appreciation

The dedication and commitment of all the staff of the Office who worked during 2009, is to be complimented and the throughput of the Office has been satisfactory. They deserve our highest praise and I, as the new Ombudsman, look forward to working with them in the years ahead. I would also like to pay tribute to Caroline Gill, who retired at year end to pursue other career interests, Gerry Murphy, who retired in July, for their work as Deputy Financial Services Ombudsmen, and to Joe Meade the first person to hold the position of Financial Services Ombudsman who retired at the start of the year. This report is their legacy.

In 2009 the Council and its Chairperson worked very closely with the Ombudsman to ensure that their respective roles were carried out in a proper and efficient manner. This helped the performance of the Office overall and gratitude is extended to the Council.

The Office is grateful for the support of Government, the Oireachtas, Department of Finance officials, the Financial Regulator and the Pensions Ombudsman. Appreciation is also due to the Financial Service Providers, to the media and to all Complainants and members of the public who made contact with the office as well as our various service providers such as legal, auditing and information technology.

Outlook

The years ahead will continue to be challenging. Complaints will be likely to continue to increase. The continuing financial and economic crisis will place increased demands on the Office. The public will quite properly demand a high level of service from us. It is heartening to note that the funding for the office for 2010 is satisfactory even when the levy to be paid has been reduced by 10%. I aim to build on the achievements to date and ensure that an efficient and effective service is provided to everybody.

William Prasifka
Financial Services Ombudsman

Mr. William Prasifka
Financial Services Ombudsman

Ms. Mary Rose McGovern
Acting Deputy Financial Services Ombudsman

Mr. Diarmuid Byrne
Head of Administration

Staff

	TITLE	GRADE
MANAGEMENT		
WILLIAM PRASIFKA	OMBUDSMAN	
MARY ROSE MCGOVERN	ACTING DEPUTY OMBUDSMAN	PRINCIPAL OFFICER
DIARMUID BYRNE	HEAD OF ADMINISTRATION / HR AND FINANCE	PRINCIPAL OFFICER
INVESTIGATION UNIT		
MICHAEL BRENNAN	PRINCIPAL INVESTIGATOR	ASSISTANT PRINCIPAL OFFICER
SINÉAD BRENNAN	SENIOR INVESTIGATOR	HIGHER EXECUTIVE OFFICER
CONOR CASHMAN	SENIOR INVESTIGATOR	HIGHER EXECUTIVE OFFICER
JOANNE CRONIN	SENIOR INVESTIGATOR	HIGHER EXECUTIVE OFFICER
SOPHIE HART	SENIOR INVESTIGATOR	HIGHER EXECUTIVE OFFICER
DARRAGH KING	SENIOR INVESTIGATOR	HIGHER EXECUTIVE OFFICER
ANTHONY O'RIORDAN	SENIOR INVESTIGATOR	HIGHER EXECUTIVE OFFICER
KATHLEEN O'SULLIVAN	SENIOR INVESTIGATOR	HIGHER EXECUTIVE OFFICER
CAIREN POWER	SENIOR INVESTIGATOR	HIGHER EXECUTIVE OFFICER
PRE-INVESTIGATION UNIT		
MEAGAN GILL	CASE MANAGER	ASSISTANT PRINCIPAL OFFICER
KEVIN FLEMING	COMPLAINTS OFFICER	EXECUTIVE OFFICER
MARTA PIEKARZ		EXECUTIVE OFFICER
DES BUTLER		CLERICAL OFFICER
TOMÁS MURRAY		CLERICAL OFFICER
PAUL HEFFERNAN		CLERICAL OFFICER
PAUL O'CONNOR		CLERICAL OFFICER
DALE HAYES		CLERICAL OFFICER

	TITLE	GRADE
FINANCE DEPARTMENT		
EVELYN MOORE	FINANCE OFFICER	HIGHER EXECUTIVE OFFICER
HR DEPARTMENT		
PATRICIA HEFFERNAN	HR ADMINISTRATOR	HIGHER EXECUTIVE OFFICER
SUPPORT STAFF		
SYLVIA COSTELLO	PA TO THE OMBUDSMAN	HIGHER EXECUTIVE OFFICER
JOAN MCGUINNESS		EXECUTIVE OFFICER
ADMINISTRATION UNIT		
JULIANNE FITZPATRICK	RECEPTION	CLERICAL OFFICER
SUSAN TOBIN	RECEPTION	CLERICAL OFFICER
JIM BARDON	SECRETARY TO THE COUNCIL	

01 Complaints

Overview

During 2009:

- 7,619 complaints were received, an increase of 28% over 2008; 4,668 complaints were made against the Insurance Sector and 2,951 complaints against Credit Institutions Sector (Table 1);
- 6,255 cases were concluded during 2009; this included 2,095 where after this office initially referred complaints to the Financial Service Provider they were resolved without any further action having to be taken by this office (Table 1 and Table 3);
- 3,805 complaints overall were resolved in Complainants' favour when account is taken of the above number of complaints 6,255 – 61% overall (Table 3).

Of the 4,160 complaints concluded after direct involvement by this office the following percentages arise (table 3):

	INSURANCE / CREDIT INSTITUTIONS
UPHELD	23%
MEDIATION AND SETTLEMENTS	18%
RESOLVED IN COMPLAINANTS' FAVOUR	41%
NOT UPHELD	37%
OUTSIDE REMIT	16%
ADVISORY REFERRALS	6%

Table 1: Summary

	2009	2008	% increase
COMPLAINTS ON HAND AT 1ST JANUARY **2009**	2,333	1,280	82%
NEW COMPLAINTS RECEIVED	7,619	5,947	28%
	9,952	**7,227**	**37%**
COMPLAINTS CONCLUDED FOLLOWING:			
OMBUDSMAN INVOLVEMENT	3,264	3,034	7.5%
AMICABLY (OUTSIDE REMIT AND REFERRALS)*	2,991	1,853	61%
	6,255	**4,887**	**28%**
COMPLAINTS ON HAND AT 31ST DECEMBER 2009	**3,697**	**2,340**	**50%**

* *Amicable Resolution means resolved after initial referral by Ombudsman to financial service provider and includes cases which were outside of the bureau's remit and those referred to other agencies.*

Table 2: Complaints received

A) INSURANCE / INVESTMENT SECTOR	2009	2008	% increase
INSURANCE COMPANIES: LIFE	1,976*	1,453	36%
INSURANCE COMPANIES: NON-LIFE	1,762	1,320	33%
HEALTH INSURERS	184	183	0.5%
INTERMEDIARIES	630	259	143%
OTHERS	116	117	-0.5%
TOTAL	4,668	3,332	40%

Table 2: Complaints received (continued)

B) CREDIT INSTITUTIONS	2009	2008	% INCREASE
BANKS	2,461	2,065	19%
BUILDING SOCIETIES	189	144	31%
CREDIT UNIONS	64	49	30%
STOCKBROKERS	56	63	-11%
INTERMEDIARIES	119	158	-25%
OTHERS	62	136	-54
TOTAL	**2,951**	**2,615**	**13%**

* *In relation to the Life figure of 1976; 1,309 cases relate solely to investment.*

Table 3: Summary of Complaints Concluded

	INSURANCE / INVESTMENT	CREDIT INSTITUTIONS	TOTAL
A) RESOLVED AFTER INITIAL REFERRAL TO FINANCIAL SERVICE PROVIDERS	1,051	1,044	2,095
B) CONCLUDED FOLLOWING OMBUDSMAN INVOLVEMENT			
B1. UPHELD	463	459	
B2. MEDIATION AND SETTLEMENTS	471	317	
B3. NOT UPHELD	933	621	
B4. OUTSIDE REMIT	353	333	
B5. ADVISORY REFERRALS	103	107	
TOTAL	**2,323**	**1,837**	**4,160**
C) RESOLVED TO COMPLAINANTS' SATISFACTION RESOLVED A, UPHELD B1 AND SETTLEMENTS B2	1,985	1,820	3,805

Complaint Trends by Area of Business

B) INSURANCE: NON-LIFE	2009	2008
TRAVEL	262	360
MOTOR	772	569
HOUSEHOLD BUILDINGS	332	155
HOUSEHOLD CONTENTS	116	85
PAYMENT / LOAN PROTECTION	216	100
SAVINGS POLICY / SSIAS	7	17
MOBILE PHONES	33	37
COMMERCIAL	56	42
PERSONAL ACCIDENT	30	21
HOSPITAL CASH PLAN	10	18
MISCELLANEOUS (INCLUDING, INTER ALIA, PET, FARM, COMPUTER, MARINE, DENTAL AND INSURANCE)	80	117
TOTAL	1,914	1521
INSURANCE: LIFE		
MEDICAL EXPENSES	282	175
LIFE ASSURANCE INCLUDING PHI	473	514
INVESTMENT POLICY	1309	621
ENDOWMENT POLICY	116	80
MORTGAGE PROTECTION	135	79
PENSION	244	199
SALARY PROTECTION OR INCOME CONTINUANCE	116	66
CRITICAL / SERIOUS ILLNESS	79	77
TOTAL	2,754	1,811
CREDIT INSTITUTIONS		
ACCOUNT TRANSACTIONS	620	617
MORTGAGES	850	517
INVESTMENTS	246	413
CREDIT CARDS	377	331
LENDING	507	358
ATM	121	161
SERVICE ISSUES	154	123
FOREIGN EXCHANGE	30	17
OTHER	46	78
TOTAL CREDIT INSTITUTIONS	2,951	2,615

Complaint Trends by Nature of Complaint

INSURANCE SECTOR	2009	2008
REPUDIATION OF CLAIM	1,021	736
CLAIMS HANDLING ISSUES	483	195
CUSTOMER CARE	155	121
MALADMINISTRATION	434	504
MIS-SELLING	749	462
MISREPRESENTATION	150	83
SETTLEMENT AMOUNT	134	169
LAPSE / CANCELLATION OF POLICY	177	158
GENERAL ADVICE	7	51
PRE-EXISTING CONDITION	51	83
POLICY REVIEWS	114	175
PREMIUM RATES	118	47
NON-DISCLOSURE	73	34
SURRENDER VALUES	413	105
PAID UP POLICY VALUES	105	51
DIRECT DEBIT	11	9
NO CLAIMS BONUS	36	24
THIRD PARTY INSURERS	41	42
FEES AND COMMISSION CHARGES	86	48
SUBROGATION	13	11
BONUS RATES	21	4
POLICY RENEWAL	29	29
DECLINED QUOTATION	22	13
PRE-ACCIDENT VALUE	22	18
POLICY TERMS	129	62
PREMIUM COLLECTION	33	18
FRAUD	2	1
UNCLASSIFIED / OUTSIDE BUREAU'S REMIT	39	79
TOTAL	**4,668**	**3,332**

CREDIT INSTITUTIONS	2009	2008
GENERAL ACCOUNT ISSUES	377	294
MISLEADING INFORMATION / MIS-SELLING	128	219
FEES AND CHARGES	214	189
MORTGAGE ISSUES	213	168
ATM WITHDRAWALS	81	161
INTEREST RATES	271	153
SERVICE ISSUES	154	152
REPAYMENT TERMS	194	138
INSURANCE ISSUES	184	135
DISPUTED TRANSACTIONS	73	127
CREDIT CARD ISSUES	186	110
LENDING ISSUES	196	109
INVESTMENT ISSUES	62	90
OTHER	46	78
INVESTMENT LOSS	48	74
OPENING / CLOSING ACCOUNTS	60	74
TRANSFER OF FUNDS / ACCOUNT	57	72
CHEQUES	52	66
CREDIT RATING	43	64
REDEMPTION / CHANGE OF MORTGAGE	237	58
REFUSALS	50	54
SSIA ISSUES	4	19
DORMANT ACCOUNTS	14	11
MALADMINISTRATION / NEGLIGENCE	7	-
TOTAL CREDIT INSTITUTIONS	**2,951**	**2,615**

Published Findings

Significant findings were published on our website during 2009. These are published in Part 04 and concerned the following matters:

- €250,000 to retired farmer for bank's cavalier approach and belittling remarks;
- €410,000 invested in Property Bond to be refunded in full;
- Grandmother's €10,000 'burial fund' and her grandchild's €2,000 wrongly invested;
- €143,000 to two elderly couples needed personal intervention of Ombudsman;
- Mortgage rate to remain at original tracker rate at end of fixed rate period;
- No breakage fee to be charged on exit from a fixed rate mortgage;
- Investment Mortgage rate alteration was incorrect;
- €175,000 award for €290,000 loss suffered by elderly couple;
- €100,000 Credit Union investment loss to be refunded;
- €100,000 for lost land certificate in cancelled €225,000 sale;
- €10,000 to Credit Union for loss of €28,000 in €130,000 life policy;
- €21,000 award as move of pension policy to secure fund not carried out;
- €6,500 for incorrect statement to pensioners about access to investment;
- Stockbroker's inappropriate investments merits awards totalling €125,000;
- €950,000 investment complaint not upheld;
- Overcharging of insurance premiums for non smokers discovered;
- €1,000 to grandmother, an uninsured driver, for Insurance Company error;
- 50% award for stolen car valued at €20,000;
- Insurance loss assessor no help to his client;
- Credit Union was wrong to release €5,400 from a minor's account;
- Hire Purchase Company's ten day clearance period inequitable;
- Change in maternity benefit cover was not an upgrade;
- €2,000 for sale of over 65 mortgage protector policy;
- €345,000 returned to two elderly investors for inappropriate investment;
- €300,000 refunded for six year investment bond wrongly sold to 85 year old couple;
- €7,000 award for breakage fee conditions on fixed rate mortgages not clearly stated;
- €116,000 award to elderly investors for wrong sale of €560,000 ten year bond;
- €90,000 for not explaining the downsides of a €150,000 geared property fund;
- €60,000 for unsuitable €75,000 High Risk Property Fund Investment;
- €53,000 award for non-disclosure of conflict of interest in investment property;
- €6,600 where €40,000 retirement lump sum investment fell €10,500 within a year;
- €6,500 for unsolicited approach to old age pensioner to change a €35,000 investment;
- €1m of alleged inappropriate investments by elderly person not upheld;
- Non payment of €625,000 life assurance death benefit by company was correct;
- €100,000 Investment Bond complaint not upheld;
- Six month notice period for cashing in investment cost investor €5,000;
- Accountancy firm's role in 'execution only' €500,000 investment was confusing;
- €7,500 award to widower told in error of possible€130,000 in death benefit;
- €3,000 for insurance reviews not carried out – possible 96,000 other cases;
- Benefit of €25,000 paid to blind person as Company's actions were unfair;
- Cause of death insurance benefit condition was inequitable – €25,000;
- Cardiac Surgery costs of €15,000 and 50% of health insurance claim of €11,400 paid;
- Benefit of doubt in complaint regarding €18,000 disability payment;
- Concerns about motor insurance policies cancelled over the phone;
- Burned out car complaint of €3,500 and son stealing it not disclosed;

- €30,000 stolen property from guesthouse and non-disclosure of prior claims;
- €200 awarded for delay in paying travel insurance claim;
- Hair transplant eyebrow treatment health insurance claim not upheld;
- Bank account of deceased could not be released to a brother;
- Allegation of €540 Credit card fraud in Thailand was upheld;
- Only €2,000 of foreign ATM withdrawals of €4,000 were fraudulent;
- €4,000 for person on 'Social Welfare' and loan repayments;
- €22,000 travel insurance cancellation claim upheld.

Issues arising during 2009

Inability of providers to pay Ombudsman's awards

Many complaints upheld by the Ombudsman related to investment advice, misrepresentation or poor investment performance and involve large amounts of money.

During 2009 the Ombudsman noticed that some providers went into liquidation or out of business. In two instances the compensation awarded is being paid over a period of time in instalments as the providers' professional indemnity insurance would not pay up the amounts in question – €50,000 and €15,000 respectively. In two other instances where High Court appeals went in the Ombudsman's favour the provider concerned stated that it may not be able to pay the €60,000 awarded as it had no funds. Where large awards had been made and are under appeal to the High Court – €500,000, €700,000 and €100,000 - the professional indemnity insurer of the providers has indicated that it will not be willing to pay up that award if the appeal is unsuccessful. It was also not possible to enforce other awards or deal with some complaints against another provider as registered post was returned undelivered because the offices were closed - in one case an award of €63,000 was involved. For some intermediaries a renewal of their professional indemnity insurance was proving problematic. While enforcement action was initiated in particular instances, the prospects of payment recovery are slight and additional legal costs are incurred by the Ombudsman.

The fact that the consumer may not get compensation or any other monetary remedy directed by the Ombudsman is a problem. Compensation or mitigation awards made would be worthless and consumers may not be protected at all. These concerns have been brought to the attention of the Financial Regulator and the Department of Finance. The establishment of an investor compensation fund funded by the financial services sector would address these concerns. The current Investor Compensation Company Limited (ICCL) does not provide compensation for losses arising from bad investment advice, poor investment management or misrepresentation but it could be amended to provide for awards being honoured. This may lead to increased levies on the industry but is preferable to the alternative of having no protection for vulnerable people.

Fixed Rate Mortgages breakage fees

The Ombudsman received a significant number of complaints in mid 2009 about the size of the breakage fee where a person wanted to switch from a fixed rate to a variable or other rate mortgage. In some instances the amounts varied between €20,000 and €45,000 where only six months of a mortgage had elapsed. In deciding on each case the Ombudsman considered whether the fee and how it was made up were disclosed to the customer when the mortgage was taken out. He also considered whether the fee was properly charged in line with the terms and conditions of the contract and whether the fee was calculated correctly.

Each complaint was considered on its merits and many were not upheld as the fee was calculated correctly and in line with contractual provisions. In deciding on the cases the Ombudsman stated that the cost of breaking the fixed rate agreement is determined by the wholesale market rates at the date

the agreement was cancelled. He also noted that the breakage fee does not include any profit for the Provider as it represents a real cost to the Provider which has entered into commitments to fund the particular rate provided in the fixed rate agreement. The Provider must continue the commitment regardless of whether the customer remains on the rate or opts to break out. As such there was no room for negotiation on the costs involved as to reduce the breakage fee would result in an immediate and ongoing loss for the Provider. Whilst the Ombudsman recognised that the breakage fee represented a significant portion of the overall redemption figure and made it difficult for customers to switch to much cheaper variable mortgages, the complaints were not upheld where the breakage fee nonetheless was properly calculated.

However, the Ombudsman did uphold some complaints and published three case studies in December 2009 where:

- Mortgage rate was to remain at original tracker rate at end of fixed rate period due to the terms of the contract;
- No breakage fee was to be charged on exit from a fixed rate mortgage due to commitments given over the phone;
- €7,000 award where the breakage fee conditions were not clearly stated.

Investment advisors not subject to Ombudsman's remit

During 2008/9 the Ombudsman received a number of complaints against accountants who gave investment advice but he could not deal with them. Accountants are authorised as investment intermediaries. They are generally authorised under approved professional bodies' status and are subject only to their self regulatory accountancy body. He had to decline investigating three major complaints involving accountancy firms where the amount invested was up to €700,000 in each instance. If found to be in breach by their professional body no compensation would be paid in most instances whereas the Ombudsman can award up to €250,000 in compensation as well as directing that the investment loss be made good.

The Ombudsman raised his concerns with the Financial Regulator that where some accountancy firms have an authorised intermediary arm which would be subject to his remit consumers may be confused as to which part of the firm they are dealing with. He considers that where any type of financial service is provided whether by accountants, legal firms, estate agents, An Post, etc. complaints should be subject to the Ombudsman's remit so as to have a level playing field for all and especially for consumers.

The Department of Finance discussed during 2009 the matter of complaints against the POSB coming under the Ombudsman's remit with the NTMA and other interested parties. This matter was raised by the Ombudsman as well as by Council since 2006. At present any consumer problems with the POSB are subject to the (Public Sector) Ombudsman who cannot award compensation.

The Ombudsman also raised with the Department and with the Financial Regulator the position of travel agents and other tour operators who sell travel insurance. Where an issue arises regarding the sales process of travel insurance policies or what was said or not disclosed at the point of their sale he cannot deal with that matter as travel agents are not financial service providers. He suggested that where they sell or market travel insurance policies this aspect of their work should be classified as a financial service subject to the Ombudsman's remit.

Matters to come under the Ombudsman's remit are ultimately a matter to be decided on by the Minister for Finance.

Naming of Providers

The naming of Financial Service Providers, when case studies are published is also an issue that has received media coverage. In his Annual Report for 2006 the Ombudsman outlined in detail why institutions could not be named, for example, on legislative, privacy and fairness considerations. This issue continues to arise, especially with the media in the light of the major findings published in 2008 and 2009.

After further reflection of this matter during 2009 the Ombudsman considered that it would be best not to name in general but to have the option, if considered to be in the public interest, to name an institution.

Whether it is an appropriate power or not is ultimately a matter to be decided by the Oireachtas. Factors against it are that the Ombudsman Scheme is working very well as it is; complainants may be less inclined to bring a complaint if they consider they might be named; institutions may take a more defensive line and might appeal findings more to the courts if they felt they were to be named anyway. In its favour is the fact that for very serious issues an institution which is found to have acted wrongly should be publicly named; it could be a preventative measure and the threat of being named could act to ensure that malfeasance, when discovered, would be easily rectified, and less likely to occur again.

Any legislation would have to be very specific to provide that only where it was considered that it would be in the public interest to name an institution, complainants should not be named and indeed that the Ombudsman should not have to publish and name every finding. The Ombudsman could see reasonable arguments being put forward by institutions that he could be selective in naming, about the criteria for naming and about safeguards necessary to ensure that institutions were not targeted unfairly.

All of these issues would have to be considered carefully before any amendments to legislation could be proposed. On balance the Ombudsman considered that he should have the power, if he deemed it appropriate, to name institutions where he felt it was in the public interest. However, before he could do that, legislation would have to be amended to give that power, specifically Section 57CC of the Central Bank and Financial Services Authority of Ireland Act 2004. Any legislative change would also require statutory privilege covering the naming of institutions.

The Minister for Finance has brought the matter to the attention of the Attorney General for his observations.

High Court Judgment

The Findings of the Ombudsman are subject to appeal and/or judicial review to the High Court.

In a judgment delivered on 27 August 2009 in the Square Capital v Financial Services Ombudsman appeal, the High Court clarified the role of the Ombudsman and indicated that where investment property advice is part of advice given by a financial intermediary, then it falls within the remit of the Ombudsman.

The following extracts from the detailed judgment are of importance:

a) Role of the Ombudsman

"It is important to fully appreciate the role of the Ombudsman when a Court such as this is considering an appeal from his decision. Clearly an appeal to this Court from the Ombudsman's decision is not a full hearing of the case where the Court looks afresh at all material and comes to its own conclusion as to what it would have done in the circumstances. The appeal here, while having some of the characteristics of the traditional judicial review, including some differential recognition for the expertise of the Ombudsman, will also have to bear in mind the nature and the functions of the Financial Services Ombudsman as laid down by the Oireachtas."

b) Decision to investigate the complaint or not

"It follows from the definitions that the decision as to whether or not a complaint falls within his jurisdiction is one that falls to the Ombudsman to determine. This is not to suggest that the Court never has a role to play in interpreting the Act, but it should intervene only in clear cut cases and then, only if such a case contains a serious and significant error."

c) Remedy proposed by Ombudsman

"It must also be recorded that the office of the Ombudsman is different from an ordinary Court of Law and the provisions of the legislation already noted, mean that the Ombudsman has greater flexibility and choice in fashioning an appropriate remedy in cases that come before him. The relevant provision enables him, for example, to mitigate or change the conduct complained of or a practice relating to that conduct. In my view, it is important, therefore, that appropriate latitude should be given to the Ombudsman in determining what the appropriate remedy is in the circumstances of each individual case."

Stockbroker Private Discretionary Client Accounts

Stockbrokers operate client accounts in a discretionary manner. In those circumstances the firm would not need investors' instructions before buying or selling investments.

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

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

While the Ombudsman noted that the investment products clearly stated that they were high risk nevertheless he found it disquieting that such products were offered to both investors considering their risk profiles. In the circumstances he considered that the investors themselves had to bear some responsibility and accordingly 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 concerned about the firm's sales 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. Indeed in one of the cases such an agreement was in place but interestingly the firm had sought permission before it made the investment even though it was not necessary.


Financial Services

02 Organisational Matters

Co-operation with Financial Regulator and Pensions Ombudsman

Meetings were held during the year with both the Pensions Ombudsman and the Financial Regulator. The 3 Offices adhered to the provisions of the Memorandums of Understanding to which the 3 Offices are signatories.

FIN-NET, Cross Border Co-operation

The Ombudsman is a member of FIN-NET. FIN-NET is a financial dispute resolution network of national out-of-court complaint schemes in the European Economic Area countries (the European Union Member States plus Iceland, Liechtenstein and Norway) that are responsible for handling disputes between consumers and Financial Service Providers, (i.e. banks, insurance companies, investment firms and others). This network was launched by the European Commission in 2001.

Within FIN-NET, the schemes cooperate to provide consumers with easy access to out-of-court complaint procedures in cross-border cases. If a consumer in one country has a dispute with a Financial Service Provider in another country, FIN-NET members will put the consumer in touch with the relevant out-of court complaint scheme and provide the necessary information about it.

Public Information

Presentations during the year included:

- Insurance Institutes – Dublin and Galway;
- Over 50s trade shows in Dublin;
- Tullamore Agricultural Show;
- FBD Insurance;
- Irish Brokers Association;
- Irish Creamery Milk Suppliers Association annual general meeting;
- Partner Re Insurance Europe;
- Age Action Ireland Conference;
- LIA seminars in Limerick and Galway;
- Waterford Institute of Technology;
- Kilkenny, Carlow, Laois and Tipperary Credit Union Chapter;
- Credit Union Managers Association;
- Credit Union National Supervisors Forum;
- Quinn Business School UCD;
- Bank of Scotland Ireland;

- Irish Banking Federation and Institute of Bankers;
- Law Reform Commission;
- Securities and Investment Institute;
- Financial Planning Standards Board;
- Chartered Institute for Securities and Investment.

International Presentations during the year included:

- British and Irish Ombudsman Association Annual Conference in England;
- Czech Republic Banking Seminar.

Visit to the Bureau during the year by officials from:

- EU Commission;
- European Parliament;
- Financial Ombudsmen from UK, Australia, New Zealand, Canada, South Africa, France and USA.

Meetings during the year included:

- Professional Insurance Brokers Association;
- Irish Brokers Association;
- Irish Insurance Federation;
- Irish Banking Federation;
- Irish League of Credit Unions;
- VHI;
- Department of Health and Children;
- Prudential Insurance;
- European Consumer Centre;
- Irish Insurance Institute;
- IFSC based Financial Service Providers;
- Individual Financial Service Providers;
- Individual Consumers.

Other public information during the year included:

- Articles in Consumer and Financial Service Providers magazines;
- Media interviews;
- Website competition for transition year students;
- Second level educational syllabuses for business;
- Attendance at various financial services functions.

Meeting of International Network of Financial Services Ombudsman Schemes

Financial problems and complaints are not unique to Ireland. It is therefore important that each Financial Ombudsman has contact with and discuss matters with fellow colleagues. Each year a conference is held specifically aimed at Financial Ombudsmen and related consumer and providers. Ireland hosted this Annual Conference in Dublin Castle from 24 to 26 June 2009. This was the first time Ireland hosted this prestigious conference.

Reflecting the current economic and financial difficulties being experienced worldwide the theme of the conference was "Financial Ombudsmen – Never more needed?" The Ombudsman, in his opening remarks stated that the purpose of the conference was to "refocus us all on what we, as Ombudsmen, are about and in a sense help to ensure that the role of Financial Services Ombudsmen is fully appreciated by all stakeholders." The conference addressed current problems and consumer complaints regarding banking, insurance and investment areas and considered how such issues were being addressed by different Financial Services Ombudsman Schemes worldwide. It also considered the different regulatory requirements worldwide as well as the efforts being made by financial service providers to have contented customers. Of particular interest was how the media viewed our roles and whether providers should be "named and shamed". The developments at EU level were also considered.

The conference was attended by over 150 delegates from Europe, the Americas, Asia, Africa, Canada, Australia and New Zealand, indicating the growing network of Financial Ombudsman Schemes worldwide. Speakers included members of all the Financial Ombudsman Schemes worldwide, the Financial Regulator, academics as well as media and industry representatives. The conference was formally opened by the Minister for Finance (Mr. Brian Lenihan, T.D.). The European Union Commissioner for the Internal Market and Services (Mr. Charlie McCreevy) spoke on current developments at EU level in consumer and financial areas.

Full details of the presentations are available on our website at www.financialombudsman.ie

Our Staff

Performance Management and Development Systems (PMDS)

The Office introduced PMDS in 2007. This was continued and further developed in 2008 and 2009. Staff members' performances for 2009 were reviewed by their managers and suitable training and development plans agreed.

Staff Training

The Office recognises its staff as a key resource and continued to provide training opportunities to enable them to further develop their knowledge and skills. The Office encourages and assists staff to take advantage of relevant further education at all stages of their career.

Partnership

The Office is committed to Partnership, and the staff involvement approach is one in which staff are consulted and involved in the management and development of the Office.

Finance

Collection of Levies

The legislation under which the Bureau operates provides that levies are payable by Financial Service Providers to enable the Bureau carry out its statutory functions. The levy amounts are prescribed by the Council with the consent of the Minister for Finance. €5,891,522 was collected.

Strategy Implementation

The Strategy Statement and Business Plan 2007–2009 was published in September 2006. Its targets and objectives were under constant review and were being implemented in accordance with the targets outlined in the Statement.

Compliance with Legislation

The Office complies with all statutory requirements in the areas of Health and Safety, Equality, Parental Leave and in other areas as follows:

Freedom of Information Acts 1997 and 2003

The Freedom of Information Acts will apply to the administration aspects of the Office.

Ethics in Public Office Acts 1995 and 2001

The Office complies with the provisions of the Acts and to the Standards in Public Office Commission's Guidelines for Office Holders.

Official Languages Act 2003

Standard letters and documents are translated into Irish and the website has an Irish section also.

Data Protection Acts 1998 and 2003

The Office adheres to the provisions of the Data Protection Acts 1998 and 2003 and will constantly review this adherence. Due to the sensitive nature of the information the Office receives it is necessary that access to data is available only to those who are involved in the investigation of complaints.

Prompt Payments of Accounts Act 1997

This Office complies with the provision of the Prompt Payments of Accounts Act 1997. During 2009 all suppliers were paid on time and no interest was accrued.

03 Financial Statements

Report of the Comptroller and Auditor General for presentation to the Houses of the Oireachtas

I have audited the financial statements of the Financial Services Ombudsman's Bureau for the year ended 31 December 2009 under the Central Bank Act 1942 as amended by the Central Bank and Financial Services Authority of Ireland 2004.

The financial statements, which have been prepared under the accounting policies set out therein, comprise the Statement of Accounting Policies, the Income and Expenditure Account, Balance Sheet, the Cash Flow Statement and the related notes.

Respective Responsibilities of the Ombudsman and the Comptroller and Auditor General

The Ombudsman is responsible for preparing the financial statements in accordance with the Central Bank Act 1942 as amended by the Central Bank and Financial Services Authority of Ireland Act 2004, and or ensuring the regularity of transactions. The Ombudsman prepares the financial statements in accordance with Generally Accepted Accounting Practice in Ireland. The accounting responsibilities of the Ombudsman are set out in the Statement of Responsibilities of the Financial Services Ombudsman.

My responsibility is to audit the financial statements in accordance with relevant legal and regulatory requirements and International Standards on Auditing (UK and Ireland).

I report my opinion as to whether the financial statements give a true and fair view, in accordance with Generally Accepted Accounting Practice in Ireland. I also report whether in my opinion proper books of account have been kept. In addition, I state whether the financial statements are in agreement with the books of account.

I report any material instance where moneys have not been applied for the purposes intended or where the transactions do not conform to the authorities governing them.

I also report if I have not obtained all the information and explanations necessary for the purposes of my audit.

I review whether the Statement on Internal Financial Control reflects the Bureau's compliance with the Code of Practice for the Governance of State Bodies and report any material instance where it does not do so, or if the statement is misleading or inconsistent with other information of the Statement on Internal Financial Control covers all financial risks and controls, or to form an opinion on the effectiveness of the risk and control procedures.

I read other information contained in the Annual Report, and consider whether it is consistent with the audited financial statements. I consider the implications for my report if I become aware of any apparent misstatements or material inconsistencies with the financial statements.

Basis of Audit Opinion

In the exercise of my function as Comptroller and Auditor General, I conducted my audit of the financial statements in accordance with International Standards on Auditing (UK and Ireland) issued by the Auditing Practices Board and by reference to the special considerations which attach to State bodies in relation to the amounts and disclosures and regularity of the financial transactions included in the financial statements. It also includes an assessment of the significant estimates and judgements made in the preparation of the financial statements, and of whether the accounting policies are appropriate to the Bureau's circumstances, consistently applied and adequately disclosed.

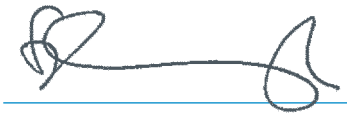
I planned and performed my audit so as to obtain all the information and explanations that I considered necessary in order to provide me with sufficient evidence to give reasonable assurance that the financial statements are free from material misstatement, whether caused by fraud or other irregularity or error. In forming my opinion I also evaluated the overall adequacy of the presentation of information in the financial statements.

Without qualifying my opinion I draw attention to note 8 of the financial statements which outlines the uncertainty regarding the ultimate financing and recognition of the pension liability.

Opinion

In my opinion, the financial statements give a true and view, in accordance with Generally Accepted Accounting Practice in Ireland, of the state of the Bureau's affairs at 31 December 2009 and of its income and expenditure for the year then ended.

In my opinion, proper books of account have been kept by the Bureau. The financial statements are in agreement with the books of account.



Gerard Smyth
for and on behalf of the
Comptroller and Auditor General

31th May 2010

Statement of Responsibilities of the Financial Services Ombudsman

Sections 57 BP and BQ of the Central Bank Act, 1942 as inserted by Section 16 of the Central Bank and Financial Services Authority of Ireland Act, 2004 require the Financial Services Ombudsman to prepare financial statements in such form as may be approved by the Financial Services Ombudsman Council after consultation with the Minister for Finance. In preparing those financial statements, the Ombudsman is required to:

- Select suitable accounting policies and then apply them consistently;
- Make judgements and estimates that are reasonable and prudent;
- State whether applicable accounting standards have been followed, subject to any material departures disclosed and explained in the financial statements;

- Prepare the financial statements on the going concern basis unless it is inappropriate to presume that the Bureau will continue in operation.

The Ombudsman is responsible for keeping proper books of account, which disclose in a true and fair manner at any time the financial position of the Bureau and which enable it to ensure that the financial statements comply with Section 57 BQ of the Act. The Ombudsman is also responsible for safeguarding the assets of the Bureau and for taking reasonable steps for the prevention and detection of fraud and other irregularities.

William Prasifka
Financial Services Ombudsman

24th May 2010

Statement on Internal Financial Control

The Financial Services Ombudsman (Ombudsman) acknowledges as Ombudsman that he is responsible for the Financial Services Ombudsman's Bureau (Bureau) system of internal financial control.

The Ombudsman also acknowledges that such a system of internal financial control can provide only reasonable and not absolute assurance against material error.

The Ombudsman sets out the following key procedures designed to provide effective internal financial control within the Bureau:

- As provided for in Section 54B of the Central Bank Act, 1942 as inserted by Section 16 of the Central Bank and Financial Services Authority of Ireland Act, 2004 the Ombudsman is responsible for carrying on, managing and controlling generally the administration and business of the Bureau. The Ombudsman reports to the Financial Services Ombudsman Council (Council) at their meetings which are generally held on a bi-monthly basis;
- The Council and the Bureau have adopted and implemented a "Code of Practice for the Governance of the Financial Services Ombudsman Bureau" based on the Department of Finance "Code of Practice for Governance of State Bodies";
- The Ombudsman has also put in place a set of Financial Procedures setting out the financial instructions, notes of procedures and delegation practices. The Audit Committee reports to the Ombudsman and Council. The Committee met on four occasions in 2009. The Ombudsman monitors and reviews the efficiency of the system of its internal procedure;
- The work of Internal Audit is informed by the analysis of the risks to which the Bureau is exposed and the Internal Audit plan is based on this analysis. Action was taken to ensure that the identified potential risks were being managed in an appropriate manner. A detailed internal audit programme of work was agreed and completed in 2009.

Review of Internal Controls

I have reviewed the internal audit report, the minutes of the audit committee meetings and the effectiveness of the system of internal financial controls. Where control deficiencies were highlighted these have been addressed.

I also note that an internal audit programme of work has been agreed for 2010 and I will implement any necessary improvements to correct any deficiencies it may bring to light.

William Prasifka
Financial Services Ombudsman

24th May 2010

Statement of Accounting Policies

The significant accounting policies adopted in these financial statements are as follows:

Basis of Accounting
The financial statements are prepared under the accrual method of accounting, except as indicated below, and in accordance with generally accepted accounting principles under the historical cost convention.

Levy Income
Council regulations made under the Central Bank and Financial Services Authority of Ireland Act, 2004 prescribe the amount to be levied for each category of financial service provider. Levy income represents the amounts receivable for each service provider calculated in accordance with the regulations and based upon providers identified by the Bureau and information supplied to it. Bad debts are written off where deemed irrecoverable.

Expenditure Recognition
Expenditure is recognised in the financial statements on an accruals basis as it is incurred.

Tangible Fixed Assets
Tangible fixed assets are stated at cost less accumulated depreciation. Depreciation, charged to the Income and Expenditure Account, is calculated in order to write off the cost of fixed assets over their estimated useful lives, under the straight-line method, at the annual rate of 5% per annum for building refurbishment, 33 1/3% for computer equipment and 25% for all other assets. A full year's depreciation is charged in the period of the acquisition and none in the year of disposal.

Capital Account
The Capital Account represents the unamortized value of income used for capital purposes.

Superannuation
For certain staff members the Bureau is in discussion with the Department of Finance regarding the future financing and management of a defined benefit superannuation scheme. Pending a decision on the matter a provision calculated as a percentage of relevant salaries has been made (see note 8).

Pending finalisation of the proposed pension arrangements, pension and pension lump sums are not charged as expenditure but are set against the pension credit balance.

For other staff members the Bureau makes contributions to a defined contribution scheme. (See note 8). These amounts are charged to the Income and Expenditure Account as they fall due.

Income and Expenditure Account

For the year ended 31 December, 2009

	NOTES	2009	2008
		€	€
INCOME RECEIVABLE	2	5,922,820	4,565,662
TRANSFER (TO) / FROM CAPITAL ACCOUNT	3	68,365	37,252
		5,991,185	4,602,914
ADMINISTRATION COSTS	4	(5,131,945)	(5,143,167)
SURPLUS / (DEFICIT) FOR THE YEAR		**859,240**	**(540,253)**
BALANCE AT 1ST JANUARY		734,826	1,275,079
BALANCE AT 31ST DECEMBER		**1,594,066**	**734,826**

William Prasifka
Financial Services Ombudsman

24th May 2010

The Bureau has no gains or losses in the Financial Year other than those dealt with in the Income and Expenditure Account.

The Statement of Accounting Policies and notes 1 to 12 form part of these Financial Statements.

Balance Sheet at 31 December 2009

	NOTES	2009	2008
		€	€
FIXED ASSETS			
TANGIBLE ASSETS	5	471,158	539,523
		471,158	**539,523**
CURRENT ASSETS			
BANK AND CASH		359,208	107,924
BANK DEPOSIT ACCOUNTS		4,207,715	3,482,324
DEBTORS AND PREPAYMENTS	6	55,558	103,772
		4,622,481	**3,694,020**
CREDITORS (AMOUNTS FALLING DUE WITHIN 1 YEAR)			
CREDITORS AND ACCRUALS	7	3,028,415	2,959,194
		3,028,415	**2,959,194**
NET CURRENT ASSETS		**1,594,066**	**734,826**
CREDITORS (AMOUNTS FALLING DUE WITHIN 1 YEAR)		–	–
NET ASSETS		**2,065,224**	**1,274,349**
REPRESENTED BY			
CAPITAL ACCOUNT	3	471,158	539,523
ACCUMULATED SURPLUS AT 31 DECEMBER		1,594,066	734,826
		2,065,224	**1,274,348**

The Statement of Accounting Policies and notes 1 to 12 form an integral part of these Financial Statements.

William Prasifka
Financial Services Ombudsman

24th May 2010

Cashflow Statement for the year ended 31 December 2009

	2009	2008
	€	€
Reconciliation of deficit to net cash inflow from operating activities		
SURPLUS FOR THE YEAR	859,240	(540,253)
TRANSFER TO CAPITAL ACCOUNT	(68,365)	(37,252)
DEPRECIATION CHARGE	123,510	131,111
INTEREST (RECEIVED)	(31,299)	(98,000)
(INCREASE) / DECREASE IN DEBTORS	48,214	(79,007)
(INCREASE) / DECREASE IN CREDITORS	69,221	1,185,017
NET CASH INFLOW FROM OPERATING ACTIVITIES	**1,000,521**	**561,616**
CASH FLOW STATEMENT		
NET CASH FLOW FROM OPERATING ACTIVITIES	1,000,521	561,616
Return on Investments and Servicing of Finance		
INTEREST RECEIVED	31,299	98,000
INTEREST PAID		
CAPITAL EXPENDITURE	(55,145)	(93,859)
FINANCING		
INCREASE IN CASH	**976,675**	**565,757**
RECONCILIATION OF NET CASH FLOWS TO MOVEMENT IN NET FUNDS		
INCREASE IN CASH IN THE YEAR	976,675	565,757
Changes in net funds resulting from cash flow		
NET FUNDS AT BEGINNING OF THE YEAR	3,590,248	3,024,491
NET FUNDS AT THE END OF THE YEAR	4,566,923	3,590,248

The Statement of Accounting Policies and notes 1 to 12 form an integral part of these Financial Statements.

William Prasifka
Financial Services Ombudsman

24th May 2010

Notes

(forming part of the financial statements)

1 Establishment of the Council and Bureau

The Financial Services Ombudsman's Bureau, established under the Central Bank and Financial Services Authority of Ireland Act 2004, is a corporate entity and consists of the Financial Services Ombudsman, each Deputy Financial Services Ombudsman and the staff. It is a statutory body funded by levies from the financial service providers. The Bureau deals independently with complaints from consumers about their individual dealings with financial service providers that have not been resolved by the providers.

The Financial Services Ombudsman Council is appointed by the Minister for Finance. Its functions as laid down in the Act are to:

- appoint the Ombudsman and the Deputy Ombudsman;
- prescribe guidelines under which the Ombudsman is to operate;
- determine the levies and charges payable for the performance of services provided by the Ombudsman;
- approve the annual estimate of income and expenditure as prepared by the Ombudsman;
- keep under review the efficiency and effectiveness of the Bureau and to advise the Minister for Finance on any matter relevant to the operation of the Bureau;
- advise the Ombudsman on any matter on which the Ombudsman seeks advice.

The Council has no role whatsoever regarding complaints resolutions.

Council and Bureau Expenses

The expenses of the Council are met from Bureau Funds.

2 Income Levy

Section 57 BD of the Central Bank Act, 1942 as inserted by the Central Bank and Financial Services Authority of Ireland Act 2004 provides for the payment of an income levy by financial service providers to the Bureau on terms determined by the Financial Services Ombudsman's Council. The Central Bank Act 1942 (Financial Services Ombudsman Council) Regulations, 2008 set the actual rate for the year ending 31 December 2009.

Income for the period is as follows:

	2009	2008
	€	€
LEVY	5,891,521	4,357,662
OTHER INCOME		110,000
BANK INTEREST	31,299	98,000
TOTAL	**5,922,820**	**4,565,662**

Interest earned on the pension bank accounts is not treated as Bureau income (see note 8).

3 Capital Account

	2009		2008	
		€		€
OPENING BALANCE		539,523		576,775
FUNDS ALLOCATED TO ACQUIRE FIXED ASSETS	55,145		93,859	
AMORTISATION IN LINE WITH DEPRECIATION	(123,510)		(131,111)	
TRANSFER FROM / TO INCOME AND EXPENDITURE ACCOUNT		(68,365)		(37,252)
BALANCE AT 31 DECEMBER 2009		471,158		539,523

4 Administration Costs

	2009	2008
	€	€
SALARIES AND STAFF COSTS	2,547,055	1,959,465
STAFF PENSION COSTS	437,125	464,863
STAFF TRAINING	21,346	42,779
BAD DEBT	22,265	3,693
BAD DEBT PROVISION	23,687	15,311
COUNCIL REMUNERATION	100,800	131,333
COUNCIL EXPENSES	8,994	23,802
COUNCIL LEGAL FEES	122,298	50,000
RENT AND RATES	190,902	212,229
MAINTENANCE	33,348	34,251
CONFERENCE AND TRAVEL	57,395	46,333
CONTRACTORS	48,508	34,115
EXTERNAL INVESTIGATORS	544,075	175,754
CONSULTANCY FEES	14,463	97,331
INFORMATION ACTIVITIES	86,368	64,682
CLEANING	26,392	21,258
LEGAL FEES	438,552	1,254,945
INSURANCE	33,241	23,951
STATIONERY COSTS	60,007	72,041
OTHER ADMINISTRATION COSTS	161,991	257,817
EXTERNAL AUDIT	13,750	13,750
INTERNAL AUDIT	15,873	12,353
DEPRECIATION	123,510	131,111
TOTAL	**5,131,945**	**5,143,167**

Staff Numbers

The number of persons employed (permanent) as at 31 December 2009 was 27 (29 in 2008).

SALARIES AND STAFF COSTS	2009 €	2008 €
OMBUDSMAN		
SALARY RECEIVED IN 2009	239,105	219,690
PENSION CONTRIBUTIONS	67,243	65,907
	306,348	**285,597**
DEPUTY OMBUDSMAN (RETIRED JULY 2009)		
SALARY RECEIVED IN 2009	132,079	198,306
PENSION CONTRIBUTIONS	–	40,000
	132,079	**238,306**
DEPUTY OMBUDSMAN		
SALARY RECEIVED IN 2009	205,513	198,306
BIK	4,800	5,284
PHI	14,695	14,569
PENSION CONTRIBUTIONS	51,378	49,576
	276,386	**267,735**

Salaries and staff costs include a total of €459,386.75 in cessation and ex gratia payments made in settlement of disputes with former employees.

Pension Related Deductions

€98,631.53 pension levy has been deducted from staff members and paid over to the Department of Finance.

COUNCIL MEMBER EXPENSES	2009 €	2008 €
TRAVEL EXPENSES	6,379	8,470
MEETING EXPENSES	2,615	7,108
CONSULTANCY FEES	–	8,224
	8,994	**23,802**

5 Tangible Fixed Assets

	COMPUTER EQUIPMENT	OFFICE FITTING, FURNITURE AND EQUIPMENT	BUILDING REFURBISHMENT	TOTAL
	€	€	€	€
COST				
AT 1 JANUARY 2009	217,847	174,484	485,000	877,331
ADDITIONS DURING PERIOD	44,380	10,765	–	55,145
AT 31 DECEMBER 2009	262,227	185,249	485,000	932,476
ACCUMULATED DEPRECIATION				
AT 1 JANUARY 2009	153,632	111,426	72,750	337,808
CHARGE FOR PERIOD	57,116	42,144	24,250	123,510
AT 31 DECEMBER 2009	210,748	153,570	97,000	461,318
NET BOOK VALUE				
AT 31 DECEMBER 2009	51,479	31,679	388,000	471,158
AT 31 DECEMBER 2008	64,215	63,058	412,250	539,523

6 Prepayments and Accrued Income

	2009	2008
	€	€
DEBTORS	5,374	3,700
PREPAYMENTS	50,184	100,072
	55,558	103,772

7 Creditors (amounts falling due within one year)

	2009	2008
	€	€
TRADE CREDITORS AND ACCRUALS	488,002	942,453
PENSION CONTRIBUTIONS	2,540,413	2,016,741
	3,028,415	2,959,194

8 Superannuation

In accordance with Section 57BN of the Central Bank Act 1942, as inserted by Section 16 of the Central Bank and Financial Services Authority of Ireland Act 2004, the Council have submitted a pension scheme for the approval of the Minister for Finance and the draft scheme is being revised in light of comments made by the Department. The scheme is a contributory defined benefit superannuation scheme based on the Department of Finance Model Public Sector Scheme. Pending legislative confirmation of the pension finance arrangements, we present this information required by FRS 17 by way of a note only. The scheme is being operated on an administrative basis with the consent of the Minister.

The Ombudsman proposed to the Department of Finance that the liability for benefits paid under the Scheme should be assumed by the State in return for payment annually of a percentage of the salaries of scheme members. The Department of Finance then sought advice from the Office of the Attorney General on this issue and is satisfied that a legislative amendment will be required before it progresses the matter. In view of this requirement the Department proposes to introduce a legislative amendment at the next appropriate opportunity. The contributions to be paid over to the Exchequer will be at a level where the Exchequer is not exposed to liabilities in excess of the revenues accruing over the years to the Exchequer. The Minister reserves the right to adjust the rate of contribution in the future in line with future actuarial adjustments on costs. The Department of Finance also indicated that this overall approach to funding the superannuation scheme is consistent with the principle accepted that the overheads associated with establishing a funded scheme is not justified where the number of staff is relatively small.

In addition, staff who transferred from the former Insurance and Credit Institutions Ombudsman offices on the date of establishment could opt to continue with their existing defined contribution scheme. These schemes, which include life cover benefit, are administered by private pension providers. Once employee and employer contributions are paid over the Bureau has no further liability. Alternatively, transferred staff could opt to become members of the Bureau scheme from the date of transfer. In these cases the Bureau received amounts on surrender of the employee's entitlements under the defined contribution schemes. The amount will be used for the purchase of added years under the Bureau scheme in accordance with the provisions of Department of Finance Model Public Sector Scheme.

Employee contributions and amounts received in respect of entitlements surrendered by transferred employees are retained by the Bureau pending a decision by the Minister for Finance as to how the scheme should be managed.

The Pension liability at 31 December 2009 is €4,900,000 (€4,100,000:2008). This is based on an actuarial valuation carried out by a qualified independent actuary using the financial assumptions below for the purpose of FRS 17 in respect of Bureau staff as at 31 December 2009. Under the proposed pension funding arrangements this liability would be reimbursed in full, as and when these liabilities fall due for payment.

The main financial assumptions used were:

	31 DECEMBER 2009	31 DECEMBER 2008
DISCOUNT RATE	5.5%	5.5%
RATE OF INCREASE IN SALARIES	4.0%	4.0%
RATE OF INCREASE IN PENSION	4.0%	4.0%
INFLATION	2.0%	2.0%

Creditor Pension Account

Pending the introduction of legislation as outlined above, amounts have been held for pay over to the Department of Finance and are analysed as follows.

	2009	2008
	€	€
OPENING BALANCE	2,016,741	1,429,980
EMPLOYEE CONTRIBUTIONS	151,864	143,377
EMPLOYER CONTRIBUTIONS	421,925	388,806
BANK INTEREST (PENSION ACCOUNT)	46,993	54,578
LESS: PENSIONS PAID	(97,110)	–
	2,540,413	**2,016,741**

9 Financial Commitments

There are no capital commitments for capital expenditure at 31 December 2009.

10 Contingent Liabilities / Legal Actions

During 2008 an appeal to the Supreme Court was made by a Financial Service Provider against a High Court judgement which considered matters following a decision made by the Ombudsman. The Ombudsman is defending this action and is awaiting a date for the Supreme Court hearing. There has been no change regarding this matter during 2009. The Ombudsman also appealled to the Supreme Court in another case and a Supreme Court Judgement is awaited. There are other normal appeals before the High Court which the Ombudsman is also defending. No provision, other than the costs incurred by the Bureau, has been made in the Financial Statements as the financial consequences of the litigation, if any, can not be determined at this stage.

11 Council Members – disclosure of interests

The Council adopted procedures in accordance with guidelines issued by the Department of Finance in relation to disclosure of interests by Council members and these procedures have been adhered to in the period. There were no transactions in the year in relation to the Council's activities in which the Council members had any beneficial interest.

12 Approval of Financial Statements

The Financial Statements were approved by the Financial Services Ombudsman on 24th May 2010.

04 Case Studies

€345,000 to be returned to two elderly investors

A couple in their 70s had their life savings on deposit but were approached by their Bank in late 2005 and advised that they would get a much better return if they took the money off deposit and invested in a Managed Fund instead. After a short discussion they agreed to do this and in early 2006 they invested €345,000 in these Funds. In July 2008, the Complainants were again contacted by the Bank and advised to switch the investment into cash as the Fund was losing heavily in value. The Complainants were very concerned about this and met with the manager of the local branch. They stated that it was only at this meeting that the investment was explained to them in detail and it was the first time that they fully understood how the investment functioned. It was only at this stage that the Complainants claimed they were informed that 70% of the investment, €245, 000, was based on the performance of the stock market. The Complainants claimed that they had never been told this before and that they would not have entered into an investment that was based on the stock market performance. By then in 2008 the €345,000 investments were worth only €265,000, invested funds of €240,000 (then valued €170,000) could not be withdrawn for at least six months and an early encashment penalty of €9,000 would also arise. The money had been mainly invested in an Irish Property Fund for a period of 5 years and 9 months. They complained to the Ombudsman that the investment was unsuitable for them.

The Ombudsman had to consider whether the recommended investments were appropriate or not. He noted that the investors were in their 70s; the husband was retired and had no pension; he suffered from heart disease (from which condition all five of his brothers had died) and was a diabetic. This personal and individual history had been pointed out to the Bank's representatives according to the Complainants, and though the Bank denied it was aware of the specifics of the Complainant's illness it accepted that its sales representative had been given basic information about the health issues.

Having regard to these circumstances and to the fact that the introduction to these products was at the instigation and initiative of the Bank and that the sales pitch and financial review had been carried out at the home of the Complainants, the Ombudsman found that the Bank had not exercised appropriate care and caution in dealing with the Complainants, given their age, investment inexperience, previous investment profile and the health of the husband. It was clear to the Ombudsman that the Complainants had misunderstood the issue of risk and the nature of the investment. He also found that the Bank, in recommending and rushing through these investments with an unacceptable degree of haste, had failed in its duty of care to these customers.

The Ombudsman directed that the full amount of money paid for the investments, €345,000, should be paid back to the Complainants in return for the surrender of the investments to the Bank.

€300,000 six year bond should not have been sold to 84/5 year old couple

A widow complained that she and her late husband had been mis-sold a Capital Protected Bond by a financial provider in December 2006. The Complainant and her late husband were 84 and 85 years of age respectively at the time, and were living with their son and his wife. A considerable sum of money was invested, some €300,000, which the Complainant indicated was from the proceeds of the sale of their house. The investment in the Bond had a term of six years and the Complainant and her husband could not access the funds invested before the age of 90/91 without incurring large penalties though they would get an annual income.

Sadly, the Complainant's husband passed away within 18 months of making the investment. As the Bond contained a provision that any death claim would be paid out only on the death of the surviving investor, sole ownership of the Bond transferred to the Complainant as surviving investor. On making the complaint in September 2008, the Complainant, now aged 87, had taken up full time residence in a private nursing home. Though the Bond had a capital protection value of €283,000 at January 2013 nevertheless if the Bond was cashed in August 2008 the surrender value was €248,000 with an early cashing in penalty of €10,000. This value was falling each day however.

In defending the investment advice the provider submitted considerable documentation to establish that the Complainant and her husband fully understood their investment in the Bond, including reference to a €100,000 deposit account which should cover their emergency needs as well as a monthly pension of €2,000. Also another open ended unprotected capital investment bond of €265,000, cashable without penalty and with an annual income, had been taken out with the same provider in 2004/5 – there was no complaint about that bond. The Ombudsman noted that while their son was present at the meetings in 2004/5 the provider stated that the couple declined its request to have the son present at the December 2006 meeting. However, what concerned the Ombudsman was not the Complainant's and her husband's understanding of the type of investment involved, although that was significant, but rather the ***suitability*** of this investment for them at the time of investment meetings in 2006, i.e. had the Provider adequately considered and discussed with the Complainant and her husband the suitability of the product, taking into account their life expectancy, circumstances and particular financial needs.

The Provider submitted a copy of the Personal Finance Review carried out with the Complainant and her husband in December 2006, purporting to contain details of their existing financial arrangements, agreed investment action to be taken, and a summary explaining the recommendations made. The stated purpose of this review was *"to review your current financial arrangements and to analyse your other financial needs"*. Upon examination the Ombudsman was struck by how little information was contained within this Personal Finance Review document. There was no mention of the customers' age profile, other than to state that both were *"retired"*. There was no analysis of the customers' attitude to risk or the need to provide for future health care needs such as nursing home care. While the Provider maintained that the financial adviser had been "very careful" to ensure that the Complainant and her husband were adequately provided for in this regard, the possible financial provision for nursing home care received no mention whatever in the Personal Financial Review report.

The Ombudsman accepted that the Complainant and her late husband were provided with detailed information on the working of the Bond, the risks involved, and the long term nature of the investment. While he also accepted that they signed the application form, however, in all good conscience he could not accept that the investment was suitable in their circumstances. Furthermore, the evidence did not support the Provider's contention that adequate consideration and discussion had taken place with regard to the age of the Complainant and her husband, the very real possibility that they would not see out the term of the investment, or the overriding requirement that they make adequate financial provision for potential long term health care costs. In short, he was of the view that recommending an investment product with a term of six years as well as hefty penalties for early encashment to an elderly couple of 85 and 84 years was a dereliction in the Provider's duty of care.

In effect, this Bond should not have been sold to the Complainant and her husband.

Accordingly, he directed that the financial provider should buy back the Bond for the original investment amount of €300,000 and pay such value to the Complainant less any income received from the Bond to date. He also considered that an additional sum of €5,000 should be paid to the Complainant as compensation for the mis-sale.

€90,000 for not clearly explaining the downsides of a geared property fund

A husband and wife who invested €150,000 in a Unit Linked Fund found that after three years their investment was worth less than €40,000. The Fund was a UK Property Fund.

The Complainants alleged that the investment was inherently unsuitable for their needs in that they had specified a low-medium risk. The Ombudsman found that the investment was not in itself unsuitable. However, the reason for the disastrous fall in the value of the investment was that the money was invested in a Geared Property Fund where the property which had been purchased by the Fund had been funded using 75% of Bank borrowings and only 25% of investors' equity. The effect of this *'gearing'* was that if the value of the property increased, it would be advantageous to the investor. However, if the value of the property was to fall this would have a disproportionate and disastrous effect on the value of the investor funds. This is what happened. The Complainants alleged that they had had no idea what 'gearing' meant in this context and that the Bank should have informed them of *'gearing'*. The Bank stated in its defence that these customers had been properly informed at two meetings which had taken place between officials of the Bank and the customers. The Complainants denied this.

There being a total conflict on the written evidence as to what was said at the meetings in question, the Ombudsman decided that an Oral Hearing was required in order to resolve the conflict of fact which had arisen. At the Oral Hearing, both parties were represented by counsel and evidence on oath was given by all the parties present at the meetings and they were cross-examined on their evidence.

Having reviewed the Oral Hearing evidence and taken all the written submissions into account, the Ombudsman concluded that the crucial question in the case was whether the Bank had wrongfully failed to disclose risks associated with the geared nature of the Fund to the Complainants at the moment of sale. After considering all the evidence, especially the evidence given at the Oral Hearing, the Ombudsman said that *"it was perfectly obvious that whereas recourse borrowing had been explained in some detail, the implication of 'gearing' to this investment was not explained at all"*. 'Gearing' in this context means that with a decline in the value of the property, the value of the investment will fall further and faster than the market value of the property itself. If there had been no 'gearing' then the fall in the value of the investment would be the same as the fall in the value of the property itself. However, he found that this complicated method of financing this particular investment had not been explained to the Complainants and he was satisfied from the oral evidence that if it had been pointed out in such stark detail, which it should have been, then the Complainants would not have invested in this product at all.

However, in apportioning blame, the Ombudsman also referred to the brochure which had said *"'gearing' by its nature may increase the potential returns from an investment such as this but it also increases the risk associated with the investment and in a worst case scenario, investors could lose all of their investment"*.

The Ombudsman felt that the Complainants (who had had the general summary of the brochure) had not read into the brochure in detail and beyond the general summary and if they had, prudent investors would have come across this passage and it may have affected their decision.

Nevertheless, the Ombudsman was satisfied that the greater onus is on a Bank when advising clients and Bank advisors need to be clear and straightforward in explaining every nuance of an investment policy to people who are going to invest their money. Accordingly, the Ombudsman found, on the balance of probabilities, that had there been an explicit verbal discussion of the downside risks associated with 'gearing', the Complainants would not have proceeded with their investment in this Fund. However, the Complainants, for the reasons stated above, had to carry some of the blame for the loss that had been incurred because they did not read the brochure in great detail, this being a contributory factor in mitigating the loss. The Ombudsman assessed this at 40%.

The Ombudsman therefore directed that the couple should surrender the Bond to the Bank after €90,000 in compensation for the breach of duty which occurred was paid.

Conflict of interest not disclosed merits €53,000 award

A couple had €100,000 to invest and sought investment advice from a broker. It recommended investing in a property scheme of apartments in the United Kingdom. The Complainants alleged that they were advised that they would not actually have to buy the property but that it would be sold on or *"flipped over"* within 12–18 months. The Complainants indicated that they wanted to have their own solicitor but the Broker said that they would have to use a particular firm of solicitors in the UK. They went ahead. They invested €53,000. The Complainants signed what was called a *"Pre-Contract"* and they alleged they were told it was not a binding contract although it turned out to be so.

A year later they learned that the sale of the apartments had fallen through and they lost €53,000. The Complainants then learned that the Broker had got a commission from the developer of 50% of the deposit which they had paid.

As a result of the Ombudsman's investigation he was satisfied that the Broker had a clear conflict of interest which he had not disclosed to the Complainants in that he was promoting the development himself and had an interest in doing so. The conflict of interest should have been disclosed to the Complainants and it was not. Furthermore, the Complainants should not have been discouraged from having their own solicitor. The Ombudsman found that the Broker had misrepresented the nature of the documents which the Complainants had signed and he directed that the broker should pay €53,000 to the Complainants. He also reported the case to the Financial Regulator as this was one of a number of complaints of this type that he had received.

€7,500 award to widower told in error on four occasions of €130,000 death benefit payout

Two years after a married couple commenced a policy of life assurance, sadly, the wife died. The following year, enquiries were made by the husband's sister in relation to benefit payable and the Company reverted indicating that €130,000 was payable to the husband, upon his wife's death. This information was subsequently reiterated by the Company and then confirmed again to the husband in person when he attended at a meeting. Subsequently however, the Company wrote indicating that the deceased had not in fact been insured on the policy, and the husband had been given incorrect information, owing to a training error. The husband was very upset that he had been told by the Company on at least four occasions that benefit of €130,000 was payable to him on his wife's death. On the strength of that information he had taken time off work to attend meetings, in order to re-arrange his financial affairs.

Investigation of the matter by the Ombudsman revealed that at the time when the policy commenced, it was only the husband's life which was covered by the policy, and that the couple

had been informed by the Company when the policy was incepted, that the wife's life would not be covered, owing to existing medical issues. Policy documentation had issued to the husband and wife confirming this, and indeed this had also been clear from the annual benefit statements issued by the Company.

The Company noted, with regret, the error made in giving incorrect information to the deceased's husband, following her death, arising it seems from an error on the part of a staff member, who had interpreted joint policy holders to mean joint lives assured. The Company advised that steps had been taken to ensure that no similar error would occur again, including the re-training of a number of staff members.

The Ombudsman noted that for a period of over a month, the deceased's husband, who had a young family to provide for, had been given to believe by the Company that he would be issued with a benefit payment of €130,000, following the loss of his wife. He had taken time off work to re-arrange his financial affairs, and was clearly therefore very distressed when he was subsequently advised that in fact no benefit was payable. The Ombudsman found it assuring that the Company had taken steps to re-train staff where appropriate, in order to avoid a similar situation arising again.

However, the Ombudsman considered that the goodwill gesture of €1,000 which the Company had previously offered to the deceased's husband, in recognition of the distress caused (subsequently increased to €1,500) was totally inadequate and he directed the Company to increase it to €7,500 instead.

€116,000 refund to elderly investors as ten year bond was sold rather than a five year one

In December 2006, an elderly couple invested €560,000 in a 10 year Bond upon the advice of an Intermediary. The Bond was surrendered for €445,000 in September 2008 at a considerable loss owing to an early exit fee and an additional deduction of €116,000 for *"Market Value Adjustment"* (MVA). The Complainants were unhappy with the imposition of the MVA which they considered penal, as they had been unaware of the potential extent of the MVA and had not realised that it could apply at any time during the term of the investment. They indicated that they had believed that penalties for encashment would only apply within the first 5 years of the investment and pointed out that they had never wished to invest in a 10 year policy.

A complaint was made against the Intermediary which had recommended the policy to the Complainants. The Intermediary referred to the Recommendation Document indicating that the Bond should be viewed as a 7-10 year investment. It also relied on the clear explanation in the *"Terms Explained"* which made it clear that the MVA was relevant to the investment if a decision was made to surrender the investment before or after the 10th policy anniversary. The Intermediary pointed out that references to the MVA were highlighted in bold type, to indicate its significance and that it had been made clear to the Complainants that it was not possible to quantify the MVA in advance. It also stated that the Complainants had signed an explicit statement that they would not encash the Bond while an MVA was in place.

The Ombudsman took the view that the Key Features Document, Reasons Why Letter and the Intermediary's Recommendation Document clearly explained how the MVA would operate. He also noted that the Intermediary's representative had explained the impact of the MVA by means of graphs and examples. He therefore found that the MVA applicable to an investment had been properly explained to the Complainants.

Nevertheless the Ombudsman noted that at the time of the parties' discussions, the Complainants had indicated a clear investment goal to invest for a period of 5 years and the timeframe for their investment was described as *"a 5 year view"* and also *"5-6 year view"*. The Ombudsman noted that

although any early exit fees would not apply after the 5th anniversary of the investment, nevertheless it was clear that the operation of an MVA might well apply at the very least, up to the 10th anniversary of the policy. In light of this, he failed to see how this product was suitable for elderly persons who only wanted a 5-6 year view. In effect a ten year Bond was sold and not a five year one as desired.

Accordingly, although the Ombudsman was satisfied that the MVA was adequately explained, this was not an appropriate product for the Complainants. He directed that the Intermediary reimburse the Complainants the 20% MVA of the fund value which had been deducted upon encashment in September 2008 – €116,000.

Alleged €1m inappropriate investments by elderly person not upheld

An elderly man in his early eighties complained that he had made two very substantial lump sum investments totalling €1m upon the recommendation of an Investment Bank in 2006 and 2007 respectively, but he had only later discovered that these investments did not provide the capital guarantee he had always said he wanted. The Complainant indicated that his wife's health was very poor, he himself was suffering from failing eyesight and therefore he had put his trust in the Company's recommendations. The investments had since fallen considerably in value and he wanted to be reimbursed the €1m.

The Bank maintained that the investment options selected by the Complainant had been fully explained and clarified with him in 2006 and 2007 respectively, and that he had fully understood the nature of the investments undertaken. The Bank said that the Complainant was a very experienced investor with significant financial acumen, who had a varied investment portfolio of guaranteed and non guaranteed items, but nevertheless because the Complainant was 80 years old in 2006, additional precautions had been taken (as required by its quality procedures) to ensure that the investments being incepted were suitable to the Complainant and that he understood the risk being undertaken. The Bank also said that the Complainant had decided against a secure investment as he wanted the flexibility of being able to access his funds, if required and was of sufficient financial net worth, in order for the investment to proceed.

The Ombudsman noted that the two investments, whilst very substantial, nevertheless left the Complainant with very considerable other cash assets available to him. He also accepted that he was an experienced investor and noted that Bank had been aware of the Complainant's wife's medical circumstances and, in fact, because of this, the Complainant had transferred by agreement other investments in their joint names, into his sole name in 2006.

The Ombudsman noted the Complainant's failing eyesight, but pointed to the Complainant's own evidence that in 2006 and 2007, he had *"signed everything put in front of him"* not because of any issue with his eyesight, but rather, because he said he had complete trust in the Company. Insofar as the Complainant made the case that he had only ever wanted a *"safe"* investment for his monies, the Ombudsman noted that the Application Form stated on the front page in bold lettering that the investments ***"can go down as well as up and are not guaranteed, so you may not get back the full amount you invested"***. The Ombudsman also noted the additional steps taken by the Bank, because of the Complainant's age, to ensure that he fully understood the nature of the investment being commenced. In that regard, the evidence showed interalia that in November 2006 the Complainant had signed his own additional handwritten note confirming his acceptance that his capital was not secure, and that the sum invested could fall as well as rise. A similar handwritten note had been signed by the Complainant in May 2007 incorporating a statement that *"I am aware that the capital invested €...., is not secure, and can fall as well as rise"*.

The Ombudsman stated that in circumstances where the parties had been in dispute in respect of a number of facts, he had given consideration to whether a sworn oral hearing would be necessary. He had determined however that the documentary evidence and submissions available were in fact sufficient to enable him to reach a decision in relation to the case.

The Ombudsman found that the Complainant could not but have been aware in November 2006 and May 2007, that the capital being invested was in no way guaranteed, and that it could fall in value, as well as rise. The Complainant's suggestion that he had always wanted a *"safe"* investment was simply not borne out by the evidence. The Ombudsman also considered it highly unlikely that the Complainant had simply signed everything put in front of him and that he had not read any of the documentation he had received in relation to these very substantial investments particularly as he was an experienced investor. The complaint against the Bank was not upheld.

High Risk Property Fund Investment of €75,000 was unsuitable – €60,000 compensation

Concerns by a husband and wife who took out three investments through a Bank were raised with the Ombudsman. The Complainants invested proceeds from the sale of land, of €86,000 in June 2006, €100,000 in March 2007 and €75,000 in April 2007 respectively in three different property funds as a means of increasing their income when they retired from their other employments some years later. All three investments had substantially decreased in value by September 2008.

The Ombudsman found that the Complainants were appropriately advised in relation to the first two investments and had received the necessary documentation and cooling off periods for these investments.

However, the Ombudsman had a serious issue with the third investment in April 2007. He noted that this investment was advised by a different Financial Consultant of the Bank to the two previous investments. This fact find noted the Complainants as not being *"savvy investors"* and were *"getting cold feet"* about this investment. It also noted that the Complainants were unsure of the terms and conditions of this proposed investment and didn't understand them. The Consultant however advised the Complainants to invest €75,000 in this high risk property fund which they did.

The Ombudsman concluded that the Bank should not have recommended such a high risk investment, taking into consideration the Complainants obvious concerns over taking out a third property fund investment. In making his decision the Ombudsman could not find fully in favour of the Complainants as he was mindful of the fact that they had already made their second investment just three weeks previous with the Bank. He also took into consideration the fact that the Complainants did receive a suitability letter, had a cooling off period which gave them the opportunity of withdrawing from the investment if they felt it was not reflective of their needs and could not but be aware of some investment risks.

The Ombudsman accordingly directed the Bank to buy back this bond at 80% of its value – €60,000.

Unsolicited approach to old age pensioner to change a €35,000 investment – €6,500 award

A 71 year old age pensioner who invested €35,000 in an investment portfolio in June 2006 complained to the Ombudsman in September 2008 that he had been sold a 5 year product which was unsuitable for him, its value was falling by February 2008 and it did not have a fixed rate of return. His money had been originally invested in another investment with a fixed rate of return and he had changed his

investment on foot of an unsolicited telephone call from his Bank. He also stated that the Bank was very slow in dealing with his complaint.

The Bank stated in evidence that the official who had conducted the transaction had since left the Bank but that where a new product was being launched it would not have been unusual to bring the advantages of such a product to the attention of existing customers where it might be to their advantage. At the time the investment was sold it offered unlimited growth potential with capital guaranteed. The Bank asserted that while it understood that the Complainant had been unhappy with the performance of the investment to date the final growth would not be known until the maturity date. There were 3 years of the 5 year investment term to run and there was the possibility that market conditions may improve before the end of the term.

On reviewing the totality of the evidence, the Ombudsman was satisfied that it was the Bank which had made what was a completely unsolicited approach to the customer asking him to call at the branch so that he could be sold a new and different investment. The Ombudsman found that the pensioner should not have been targeted in this way, that the Bank had not given good advice and should not have sold this particular investment to the pensioner, having regard to his age and financial circumstances. The Ombudsman found that the Bank had failed in its duty of care and he directed the Bank to pay a sum of €6,500 in compensation for the negligent advice given.

€3,000 insurance fund increase for reviews not carried out – possible 96,000 other cases

The Complainant purchased a unit-linked, whole of life insurance policy with the Company in 1983. Life cover under the policy was approximately €240,000, with a yearly premium payable of €900. Her policy included a *'policy review'* provision which provided for the review of the premium and benefit payable under the policy at stated intervals.

A review was carried out on the 10th anniversary of the policy. The Company advised the Complainant at the time that there was no need for her to change the premium payable in order to maintain benefits under the policy. However, in 2008 the Company wrote to the Complainant advising her that the premium payable was no longer sufficient to maintain the level of cover under the policy. The Company advised the Complainant that she could continue to pay annual premium of €900 for life cover of €85,000 or maintain life cover of €240,000 for an increased annual premium of €4,900. The Complainant was shocked at the requested increase in premium and referred the matter to this Office.

In assessing the complaint the Ombudsman looked at the policy documentation and examined whether the Company had carried out the policy review in line with the policy's terms. The Ombudsman concluded that the Company was entitled to carry out policy reviews and these were clearly provided for under the policy documentation. However, the Ombudsman noted that while the Company carried out a review on the 10th anniversary, it failed to carry out reviews in 1998 and 2003. The Ombudsman found that reviews should have been carried out at these times and by not doing so, the Complainant did not have the opportunity to consider her life cover options at an earlier date than 2008.

The Ombudsman directed the Company to increase the value of the Complainant's fund by €3,000 and to carry out a review based on this increased value.

The Ombudsman had serious concerns that this failure may have occurred in other instances and he informed the Company and the Financial Regulator in March 2009 that he would expect similar policies be reviewed to ensure that this was not the case. Due to a High Court judgment he could not direct the Company to do so and he was accordingly pleased to note the May 2009 Company's response. It indicated that to identify if each policy had all relevant reviews carried out would involve

manually checking 96,000 policies which would be an inordinate amount of work. Instead it proposed to carry out a sample review in the region of 160 policies and the results of same would be furnished to the Ombudsman. While the Ombudsman was satisfied with this approach he requested that the random sample be increased to 300 and he awaits its outcome.

Benefit of €25,000 paid to blind person as Company's actions were unfair

A woman in her 50s held a critical illness policy with an Insurance Company and submitted a claim for benefit arising from her loss of sight. The Company declined the claim on the basis that the Complainant did not meet the criteria set out in the policy of *"total, permanent and irreversible loss of all vision in both eyes"*. The Complainant had suffered for many years with a rare debilitating disease categorised by the fragmentation of elastic fibres in the skin and the membranes of the eyes. The particular disease from which the Complainant suffered was not covered by the policy but the Complainant sought to qualify under the heading of *"Blindness"*.

The Ombudsman considered the medical evidence available which confirmed that prior to the inception of the policy the Complainant had suffered from tired eyes and eye strain as a result of which she had been referred to a Consultant Ophthalmic Surgeon. The policy had commenced in 1994 and the medical evidence disclosed a marked deterioration in the Complainant's vision during the late 1990s ultimately leading to the Complainant's claim to the Company in September 2006 on the basis that she had then become blind.

The Ombudsman noted that in considering the Complainant's claim, her Ophthalmic Surgeon had been required to complete an assessment and had been specifically asked whether the Complainant had permanently and irreversibly lost the sight in both eyes and when this had occurred. The Surgeon's response had been *"yes"* and he had confirmed that visual acuity had dropped to the level outlined by September 2004. He also confirmed that there was no prospect of vision improvement by way of surgery. In those circumstances the Ombudsman took the view that it was inappropriate for the Company to have refused the Complainant's claim on the basis that she did not meet the criteria set down in the policy.

The Ombudsman noted that it was a full two years after the Complainant's claim had been refused, that the Complainant's Consultant Ophthalmologist, upon being pressed, had confirmed that the Complainant had a level of peripheral vision and that, in that sense, her loss of sight was not *"total"*. In circumstances where the policy document contained no reference to the exclusion of claims for benefit, where peripheral vision was noted to exist, the Ombudsman took the view that the opinion of the Surgeon in October 2006 that the Complainant had permanently and irreversibly lost the sight in both eyes, was sufficiently clear in respect of the position and the Company ought to have admitted the Complainant's claim at that juncture.

The Ombudsman also noted that it was not open to the Company to decline the claim on the basis that the Complainant's condition pre-existed the inception of the policy as the policy set out the limits of the pre-existing conditions relevant to loss of sight and the Complainant had not suffered from any of the pre-existing conditions identified in the policy, nor had she become blind within the first two years of cover.

The Ombudsman upheld the Complainant's grievance and directed payment of the lump sum benefit of €25,000 pursuant to the critical illness policy.

€25,000 to be paid as cause of death insurance benefit condition was inequitable

A woman living in rural Ireland complained to the Ombudsman in relation to her 71 year old husband's Accidental Death Benefit Policy. Her husband had suffered a serious fall giving rise to a fracture of the pelvis and, notwithstanding hospitalisation, died within a period of 3 weeks. The Insurance Company had nevertheless refused her claim for benefit, on the basis that the Policy criteria required that for benefit to be payable, the *"sole"* cause of the policyholder's death must have been bodily injury, as defined. The Company pointed out that the deceased had suffered from Parkinson's disease and Dementia, and the death certificate confirmed the primary cause of death as a heart attack.

The Ombudsman noted the evidence from the deceased's GP that prior to the deceased's fall, he had been in relatively good health, although being frail, but the immobilisation caused by the fracture of the pelvis had resulted in his confinement in a hospital bed. His dementia and confinement in unfamiliar surroundings caused him considerable disorientation and distress resulting in him being unable to eat. This led to a rapid decline in his health three weeks after being hospitalised to treat the broken pelvic bone and he had suffered a heart attack and died.

The Ombudsman considered that the policy wording requiring that the *"sole"* cause of death be the bodily injury, was unduly narrow and unworkable on a practical level, and indeed was likely to cause unfairness to policyholders. This likelihood of unfairness in his opinion was compounded in this particular case, by the age and frailty of the policyholder. The Ombudsman noted that serious fractures in geriatric patients are accepted by the medical profession as carrying a very substantial risk of increased morbidity and indeed mortality. The Ombudsman opined that the strict application of a criterion for the *"sole"* cause of death to be the bodily injury alone would be likely to cause considerable inequity in the particular circumstances of the case.

The Ombudsman accordingly directed the Company to admit the Complainant's claim for €25,000 and he also directed the Company to examine the issue of the very strict policy wording, with a view to amending it in order to reduce the risk of unfairness to policyholders. He also brought this matter to the attention of the Financial Regulator as it may apply to other insurance industry policy providers also.

Cardiac Surgery costs of €15,000 repaid as pre-existing medical condition did not arise

A health insurance Provider had declined the Complainant's claim for medical expenses incurred on three occasions for cardiac surgery in the Blackrock Clinic in early 2008 on the grounds that his symptoms were present prior to his joining the health insurance scheme. The Complainant disputed the Provider's decision on the grounds that he had telephoned the Provider prior to each surgery to confirm that he would be fully covered and proceeded with the surgery on this basis. He further stated that he did not have any symptoms of coronary disease prior to joining the Scheme.

The Ombudsman found that the rules of the Health Insurance Scheme in dispute were clear. The Company would not pay benefits for treatment which a person required during any waiting period that applied under their scheme. Under the terms of the Complainant's scheme, waiting periods applied to all new joiners and, in the Complainant's case, a pre-existing waiting period of 10 years applied. This was clearly explained in the policy booklet and also in the policy brochure. The policy terms and conditions defined a pre-existing condition as:

"Any disease, illness or injury which began, or the symptoms of which began, before the person with the disease, illness or injury started his or her current continuous period of membership of the scheme."

Mindful of the Complainant's allegations regarding advice received from the Provider over the telephone, the Ombudsman examined the Provider's customer log recording the content of telephone calls between the Complainant and a customer representative of the Provider in early 2008. He was satisfied that these records showed that the Complainant was properly advised by the Provider and that it was explained to the Complainant on two occasions that if the symptoms of the medical condition being treated arose before membership of the Scheme, that condition would not be covered under the policy.

The question which then remained to be decided by the Ombudsman was whether or not the Provider had correctly assessed the Complainant's claims as relating to a medical condition the symptoms of which pre-dated his joining the Health Insurance Scheme in question. It was clear that the Claim Forms submitted and signed by the Complainant's Consultant gave no indication that the symptoms of the condition being treated pre-dated the Complainant's membership of the Scheme, and indeed stated that they did not. The Complainants GP had confirmed in writing that the information he had provided, and upon which the Provider had based its decision to decline the Complainant's claims, had been in error and without reference to his medical notes. He later confirmed that the Complainant had not attended him with chest problems until a date after joining the Provider's Health Insurance Scheme, and he appended full medical notes dating back to 2004 in support of this. It was also clear that while the hospital records submitted contained a note that the Complainant was receiving a drug to reduce blood cholesterol in December 2005, there was no suggestion that this drug had been administered to the Complainant for the treatment of coronary arteriosclerosis, as contended by the Provider.

It was therefore questionable whether, irrespective of the date the symptoms began, the coronary disease with which the Complainant suffered, and for which he required surgical intervention some four months after his date of membership, had begun prior to the date of membership. However, having considered all the submissions, the Ombudsman was satisfied on the balance of the evidence before him that the symptoms of the Complainant's condition did not pre-date his membership of the Provider's health insurance scheme. He accordingly directed that the costs of €15,000 be borne by the health insurance provider.

Benefit of doubt in complaint regarding €18,000 disability payment

The Ombudsman examined a case where the Company admitted liability in respect of the Complainant's disability claim with effect from 2005. As part of the regular review of the claim, the Company sought a number of medical reports and following examination of these reports the Company ceased payment of €18,000 in 2008. The Complainant appealed this decision.

In order to be eligible for benefit the Complainant had to demonstrate she was *"totally incapable by reason of illness or injury of following her normal occupation"*. The Complainant argued that she was physically totally incapable of carrying out her job. In particular, the Complainant pointed to the fact that she had a metastatic cancer lesion and stated the psychological aspects of her condition, with their attendant debilitating effects rendered her totally incapable of working.

The Ombudsman noted that her employer's doctor retired her on the grounds of ill health in June 2008. Following the Complainant's appeal, the Company arranged for a number of medical assessments for the Complainant with *inter-alia*, an oncologist, an occupational physician and a psychiatrist. The Complainant submitted a number of her own medical reports supporting her position. The Company on receipt of all these reports did not change their position regarding the declinature of the claim.

The Ombudsman ex amined all the reports and took note of the comments regarding metastatic disease which stated *"the behaviour of which is unpredictable"* and other medical evidence which stated *"the Complainant is now well established in the 'sick role' and she cannot countenance a return to work"*.

The Ombudsman took into account the conflicting medical evidence and he considered that the benefit of the doubt should apply in this case. He directed that the claim should be paid subject to an annual review thereafter.

Allegation of €540 Credit Card fraud in Thailand was upheld

A Complainant who went on a trip to Thailand found when she came back that three transactions had been deducted from her Card, transactions which she claimed she had not incurred and which she claimed were unauthorised.

In response to the complaint, the Bank carried out a comprehensive investigation into the disputed transactions, during which it looked at previous fraudulent activity in the geographic region in question in order to ascertain whether there were any fraudulent patterns in these transactions. The Bank's investigation concluded that no fraudulent activity was present on the account. This conclusion was arrived at due to the sporadic nature of the transactions over the course of a month and the pattern of the said transactions. The Bank pointed out that the disputed transactions were PIN verified and that the correct combination of Card and PIN were used to carry out the transactions, therefore the Bank was contractually bound to debit the sums from the Complainant's account.

The Ombudsman, having investigated the matter, found that the Bank was absolutely correct to debit the money initially as the transactions were both Card and PIN verified. However, once a report of fraud is made there is an onus on the Bank to investigate this matter. An investigation was duly carried out as a result of which the Bank was satisfied that no fraud had occurred.

However, the Ombudsman, having examined all the evidence and considering all the surrounding circumstances, came to a different conclusion. In his opinion, on the balance of probability, a fraud of some kind did take place. There was no evidence of negligence on the part of the Complainant and therefore the Ombudsman directed the Bank to credit the Complainant's account with the amount debited, €540.

Only €2,000 of foreign ATM withdrawals of €4,000 were fraudulent

A university student who, during his holidays, went on an exchange trip to various European countries complained that he had €4,000 withdrawn from his account through the ATM system without his authorisation. €2,000 of the money had been withdrawn in small amounts in France, Spain, Germany, Poland, Czech Republic, Croatia and Slovenia and a further €2,000 was withdrawn in Italy. He had not been in Italy but the internal complaints procedure revealed that he had been present in the other countries on the dates of the transactions. The Bank stated that its investigation revealed that the transactions in Italy did have a fraudulent pattern to them and therefore the Bank was satisfied that he had been defrauded in Italy and the €2,000 was refunded to him by the Bank. However, the Bank refused to return any of the money withdrawn in the other countries on the grounds that the pattern of spend normally seen on a counterfeit Card did not occur.

The Ombudsman was satisfied that the Bank had carried out a full investigation and he found that the Bank had not acted unfairly in refusing a refund for the transactions, apart from those that took place in Italy. This was because those transactions were made using the correct combination of the Card and PIN and the circumstances were clearly distinguishable from the transactions which had taken place in Italy. The complaint was not upheld.

50% of health insurance claim of €11,400 paid as pre-existing condition not fully proven

The Complainant transferred Health Insurance cover to another Health Insurance Company in March 2003 with a break in cover of 17 weeks. It was explained to the Complainant that due to his cover with his previous insurer lapsing for a period greater than 13 weeks, waiting periods would apply to him on joining. This meant that no benefit would be payable for any treatment he would receive during any applicable waiting period. The Complainant subsequently submitted a claim for €11,400 to the Company in respect of treatment received for Alcohol Dependence Syndrome in June 2008. The treating hospital stated:

"Nature of symptoms to be Depression, insomnia, and regular alcohol intake", and went on to note "the primary diagnosis as being Hazardous Drinking, Depression/OCD".

A pre-existing condition was defined under the policy of insurance as:

"Any disease, illness or injury which began or the symptoms of which began before the person with the disease, illness or injury started his or her current continuous period of membership of the scheme."

Pre-existing conditions are not covered under the policy until such time as the applicable waiting period has passed. The applicable waiting period in this instance case was the first seven years of membership. This meant that the Complainant would not be covered for any pre-existing condition until seven years of membership had passed.

The Company assessed the claim and repudiated same on the basis that the condition suffered by the Complainant was a pre-existing condition since 1999 for which the applicable waiting period had not been served. The Complainant in his submissions to the Ombudsman argued that the condition suffered by him in 2008, i.e. alcohol dependence syndrome was not a pre-existing condition. The Complainant stated that the condition which required treatment in 1999 was Depression / OCD, while the condition suffered in 2008 was alcohol dependence syndrome. The Complainant's treating doctor strongly supported this view.

The Ombudsman during the investigation of the complaint had regard not only to the terms and conditions of the insurance contract but also to what he believed to be fair and reasonable under the circumstances. He formed the opinion based on all the medical evidence submitted that a question did arise as to whether the cause of the Complainant's admission to the treating hospital was due in fact to alcohol dependence syndrome or whether it was due to a pre-existing condition, i.e. OCD / Depression. The Ombudsman pointed out that the evidence submitted indicated that the Complainant had not a history of serious alcohol abuse. In the circumstances he requested the Company to pay the Complainant 50% of the benefit payable under the policy for the treatment received.

€30,000 stolen property from guesthouse not upheld for non-disclosure of prior claims

The complainant was a guest house owner who had incepted a Guest House Multiperil Policy of Insurance in March 2006. In May 2006 the Complainant reported two stolen property claims under the policy amounting to €30,000. Following investigation of the claims the Company cancelled the Complainant's policy *ab initio* on the grounds that the Complainant had failed to disclose a number of previous property damage claims with previous insurers as required by the Proposal Form. A refund of all premiums paid was then made. The Complainant was unhappy with this decision.

The Complainant argued that the Proposal Form in dispute failed to set out clearly the information which it specifically required, e.g. dates and amounts of previous claims and the insurance company to whom these claims were made. The Complainant also queried the Company's interpretation of the details provided her in response to a particular question on the form as referring to two claims only, one in 2003 and one in 2004. The Complainant stated that the information she had given specified no particular dates.

Having studied the Proposal Form and the questions contained therein, the Ombudsman noted that the Complainant was asked clearly to provide the details of *"any accident, loss, damage, or liability during the last 5 years, whether insured or not"*. It appeared to be the case, and the Complainant did not dispute, that within the previous five year period the Complainant had made four separate claims under previous household insurance policies with two other insurance companies. The Ombudsman did not find, by any interpretation, that the response given by the Complainant to the question, i.e. *"damage to dining room ceiling by burst radiator pipe upstairs; carpet damage by leaking radiator €1,100 (2005)"*, was a full and accurate disclosure of the details requested.

Furthermore, in response to the question, *"Are you **at present** or **have you ever been insured** [Ombudsman's emphasis] in respect of the perils and contingencies to which this Proposal refers? If "Yes", state name of Insurance Company,"* the Complainant disclosed the name of only one insurance company with whom she was insured at that time or immediately prior to completing the Proposal Form, but failed to disclose that she had had insurance cover with another insurance company previously and against which policy she had also made a number of claims.

The Ombudsman emphasises again that it is important to remember that an insurance contract is a contract uberrimae fidei – a contract of the utmost good faith. This is one of the fundamental principles of insurance. An applicant for insurance is in the best position to know the facts and circumstances relating to his or her application, and he or she has a duty to disclose all such material facts to the insurer. Such facts have to be disclosed fully, accurately and truthfully. If an applicant for insurance is in any doubt as to whether a fact is material, then it should be disclosed to the insurance company.

The Ombudsman found that the Proposal Form drew the Complainant's attention to the serious consequences of failure to disclose all material information, all material information had not been provided and in the circumstances the Provider was entitled to void the Complainant's policy from inception.

Burned out stolen car complaint of €3,500 not upheld as son stealing it not disclosed

The Complainant had his vehicle stolen from outside his daughter's house. The vehicle was subsequently recovered by Gardaí but had been burned out. A claim for €3,500 was submitted to his Insurance Company for the loss of the vehicle.

The Insurance Company issued a Motor Theft Report Form to the Complainant. This form was completed and signed by the Complainant before being returned to the Insurance Company. The Insurance Company upon receiving the Motor Theft Report Form carried out extensive investigations and contacted the investigating Gardaí. As a result of these investigations it transpired that the Complainant's own son had stolen the vehicle, crashed it and later burnt it out.

After submitting the claim to the Company the Complainant and his son were called to the local Garda station for questioning. During this questioning his son admitted taking the vehicle. The Complainant had withheld this information when completing the Insurance Company's Motor Theft Report Form and continued to withhold the information. The Ombudsman also noted that the Company called the Complainant into its office and conducted a face-to-face interview. During this

interview the Complainant admitted that he had known that it was his son who had stolen the vehicle.

The Company repudiated the claim on the grounds of non-disclosure of a material fact and the Ombudsman upheld its decision.

Fall of €10,500 in €40,000 investment merits €6,660 award

A bank customer who had just retired on pension received €50,000 in a tax-free lump sum and a pension of €570 per month. He went to the Bank for investment advice and was advised to put €40,000 in a particular fund and place €10,000 on deposit. One year later the fund was worth only €30,500. He cashed in his policy and complained to the Ombudsman that he had been badly advised.

The Bank stated that the Complainant was regarded as a *"growth investor"*. In other words, he was a person who, in its eyes, was looking for opportunities for his investments to outperform inflation and that he was therefore prepared to invest in equities, assets and property etc. The Bank also stated that it did expect that these assets would outperform deposits in the medium/long term and that the Complainant understood fully that they were subject to investment risk in that the worth of the investment could fluctuate and might end up worth less than what was put in. The Bank stated that the Complainant admitted that he understood that if the investment did not perform as intended, he might not get all of his money back.

In assessing the case, the Ombudsman placed particular reliance on the documentation provided by each of the parties. The Bank had conducted a financial review and as part of this review they conducted an attitude to risk. The Bank alleged that the Complainant described himself as a growth investor. However, the Ombudsman, having reviewed the file, noted that the Complainant had no other investments whatsoever nor did he own any property. This would seem to indicate that the Complainant was a somewhat inexperienced investor, to say the least. The Complainant had said that he was never given the option of any other type of investment product. There was a 30 day cooling-off period which the Complainant had not availed of.

The Ombudsman came to the conclusion that the Complainant had indeed understood from the outset that the product included some element of risk to his funds. However, the Ombudsman was not satisfied that all measures were taken by the Bank to adequately explain to the Complainant the extent of the risk that he would be undertaking, particularly having regard to the fact that this was his only capital. The Ombudsman found that the Complainant must accept some responsibility for having agreed to the investment. Nevertheless the Bank must bear the major share of responsibility and he directed that the sum of €6,660 be paid to the Complainant by the Bank for the inappropriate sale which had occurred.

€100,000 Investment Bond complaint not upheld

A customer claimed that he was pressurised by his Bank into investing €100,000 in an investment bond. He lost money on the bond which did not do well. He complained to the Ombudsman that his original investment ought to be returned to him because he had not been given a copy of the Terms and Conditions of the investment , that he was not informed of any cooling-off period and that the Bank had taken the initiative in introducing him to the bond. The Bank stated that at a meeting the documents in question were handed over to the Complainant. The Complainant said *"that never happened"*. However, after considering the evidence, the Ombudsman came to a different conclusion in that the Complainant was mistaken and that the Bank's advisor did give him a copy of the Terms and Conditions of the investment, including the cooling-off period and that the decision to invest was not made on foot of improper pressure applied by the Bank's advisor. The complaint was found not to be substantiated.

Bank account of deceased could not be released to a brother

A Complainant whose sister had died sought to have the funds in her Bank account at the Bank released to him. The Bank refused. The Complainant brought a complaint to the Ombudsman claiming that the Bank was acting wrongfully in not releasing the funds to him as he was her legal representative. However, the basis for the Bank's refusal was that the customer had left a Will and the Complainant was not the Executor thereof.

The Ombudsman found that the Bank was correct in its contention that the Executor is the only person to whom the Bank could release funds. The Executor's powers derive directly from the Will and the provisions of the Will, including the appointed Executor, are deemed to be evidence of the intentions of the deceased person (apart from a situation where the entire value of the estate is less than €25,000 where a bank can pay out without a Grant of Probate or Letters of Administration being taken out). Otherwise where a valid Will exists the funds can only be released to the Executor named in the Will.

The Ombudsman pointed out that if the Complainant was entitled to succeed under the Will of his late sister then the appropriate course of action was for him to apply to the Executor named in the Will and have the appropriate funds released to him. The Ombudsman was satisfied that the Bank had acted correctly in this case and the complaint therefore was not upheld.

Six month notice period introduced for cashing in investment policy cost investor €5,000

The Complainant invested €40,000 in a unit-linked policy with an Insurance Company in January 2004. In March 2008, the Complainant attempted to withdraw his investment and completed a savings withdrawal form. However, in January 2008, the Company had introduced a six month delay (notice period) for cashing in or switching from the plan, i.e. six months' notice had to be given to the Company before the withdrawal could be carried out. Therefore when the withdrawal took place in September 2008 the Complainant received €64,000 which was €5,000 less than he would have received in March. He also argued that, at the sale of the policy, he had not been made aware that a notice period could have been introduced and had lost money as a result.

The Ombudsman concluded that the policy documentation and sales process clearly referred to a possible six month delay notice period being applied to withdrawals and noted that the Company wrote to the Complainant in January 2008 when the notice period was being applied. The Ombudsman noted that the application of this delay notice period was to protect the investors who remained in the fund for the long term and the Company had justified its application. The Ombudsman did not uphold the complaint.

Concerns about motor insurance policies cancelled over the phone – €800 award

The Complainant had a motor insurance policy with the Company and on 1 August 2006 was involved in a single vehicle accident. He advised the Ombudsman that he subsequently phoned the Company to inform them of this and to "stop" his car insurance from the time of the accident, until he got a new vehicle and could transfer cover to the new vehicle. A claim was submitted to the Company for the damage caused to his vehicle. The Complainant requested that cover be transferred to the new vehicle three weeks later but was informed that this could not be done, as the policy had been cancelled as opposed to suspended. He was advised that a new policy would have to be set up.

The Complainant attempted to resolve the dispute over a period of four months but during this time spoke to many different Representatives of the Company who provided him with inconsistent advice in regard to his motor insurance policy. The Complainant also disputed the deduction of the remaining instalment payments under the policy from the settlement amount of his claim. The Company was of the view that it is confirmed in policy documentation that the Company has the right to take any premium owed from any claim it may pay. The Company apologised to the Complainant on account of his dissatisfaction with the information provided to him by its Representatives.

As regards the Complainant's allegations that he received different advice from different Company Representatives, the Ombudsman found it impossible to decide on as the names of Company Representatives were never provided, so that the Ombudsman could obtain statements. The Ombudsman was satisfied that the policy clearly and unambiguously confirmed that if a policyholder was paying a premium via instalments, the full yearly premium became payable in the event of the submission of a claim under the policy during the relevant period of cover.

However, the Ombudsman was conscious that the substantive element of this dispute surrounded what was advised to the Complainant when he contacted the Company via telephone to notify it of his accident. The Complainant argued that his motor insurance policy should have been suspended as opposed to cancelled. The Company argued that it had details of the Complainant's request to "cancel" his policy made on 10 August 2006. Therefore the Ombudsman requested from the Company a copy of the Complainant's written request to cancel his motor insurance policy with the Company, as well as a copy of the letter issued from the Company to the Complainant confirming the cancellation of this policy. In February 2009 the Company informed the Ombudsman that it did not receive a written request from the Complainant to cancel his policy. In addition it advised that it was not until October 2006 that it issued a letter to the Complainant confirming that it had cancelled his motor insurance policy with effect from 1 August 2006.

Regardless of whether the Complainant's insured vehicle was roadworthy after 1 August 2006, the Ombudsman found it unacceptable that the Company would cancel a policy via telephone when the policy conditions specifically require cancellation in writing. The Ombudsman also expressed his concerns that the Company did not notify the Complainant in writing of the cancellation of his policy for approximately two months. The Ombudsman felt that had the Complainant made his request in writing, this element of the dispute would not have arisen and he also noted that the Company could not provide any audio, cd or transcripts of the relevant telephone conversations. The Ombudsman accordingly requested the Company to make an award of €800 for the inconvenience and confusion caused to the Complainant.

The Ombudsman also asked the Company to review its policy of not recording phone calls and referred this aspect to the Financial Regulator. The Financial Regulator indicated in May 2009 that a consultation would shortly take place about recording and maintaining phone and other electronic communications in the context of MIFIDS regulations but are not at this time requiring other firms to do so. The motor insurance issue may be considered in the context of a proposed review of the Consumer Protection Code in due course.

Accountancy firm's role in "execution only" €500,000 investment was somewhat confusing

In 2003, the Complainant attended a presentation given by a staff member of a firm of financial advisors/accountants. The presentation gave information regarding an investment product which was being offered by a financial institution in Europe. The Complainant subsequently invested in the product on an *"execution only"* basis, investing a sum of over €500,000. The investment product

performed poorly and the Complainant complained to the Ombudsman about the information and service received from the firm of financial advisors.

In investigating the complaint the Ombudsman requested all documentation issued by the firm of financial advisors and requested clarification as to the firm's status regarding the sale of the investment product. The Ombudsman also noted the contract between the Complainant and the financial institution with which the investment was held. He pointed out that the investment was carried out on an "execution only" basis and that the Complainant acknowledged he was never a client of the firm of financial advisors which carried out the presentation.

The Ombudsman found that the complaint against the firm of financial advisors could not be upheld as the Complainant was never a client of the firm. He also found that the information provided at the presentation was clear as to the nature of the investment product being purchased by the Complainant.

However, the Ombudsman raised serious concerns he had regarding how the firm of financial advisors referred to itself on its documentation. He noted that some documentation referred to the firm as giving financial advice, whereas other documentation referred to wealth management. The firm has since taken steps to ensure that this matter was resolved.

He also noted that as the firm was an accountancy firm it was authorised as an investment intermediary under an approved body authorisation (not subject to Ombudsman's remit) as well as having a separate investment intermediary company which was subject to the Ombudsman's remit. The Ombudsman pointed out that confusion may arise in this regard when consumers sought investment advice and referred the matter to the Financial Regulator as he considers that where a complaint about any investment advice arises it should be subject to the Ombudsman's remit so as to have a level playing field for everyone.

€200 awarded for delay in paying travel insurance claim

The Complainant incepted a travel insurance policy with the Company to cover his trip to Austria for two weeks in February 2007. Whilst on holiday in Austria, the Complainant had an accident whilst snowboarding and required treatment in hospital. Upon his return home he submitted a claim to the Company. The Complainant argued that although he was asked if he wanted the Company's Claims Administrators to pay the hospital directly two weeks after he submitted the claim, a few weeks later the payment had still not been made and he subsequently received a cheque for the incorrect amount in the post from the Company's Claims Administrators. He pointed out that this occurred despite the hospital's specific requirement that payment be made within 10 days.

The Complainant corresponded with the Company's Claims Administrators regularly following the submission of his claim and requested regular updates. Despite this, in July 2007 the Complainant received a letter from the hospital in Austria advising that it would be taking legal action to recover the outstanding payment which had still not been received by it. The Complainant was particularly aggrieved to have received same. In response to the Ombudsman, the Company accepted that there was a delay of fifteen working days from when it received the Bank details for the hospital to making the actual payment. It advised that this was considered outside its normal procedures and it apologised for any inconvenience caused. The Company confirmed that payment in full had since been made to the hospital and forwarded evidence of same to the Complainant and the Ombudsman.

The Ombudsman found that it was clear from the evidence submitted that there was some confusion during the assessment of the claim and delays were incurred as a result. He was also concerned about the Claims Administrators' level of communication with the Complainant during the assessment of the claim and found that this could have been better. In view of all of the customer service issues raised the Ombudsman found that the Company was to pay the Complainant €200 for the stress and inconvenience caused to the Complainant.

Hair transplant eyebrow treatment health insurance claim not upheld

The Complainant was a staff member of a Health Insurance Company. He had an excision of a malignant lesion to his medial eyebrow area. The Company paid the Complainant the benefit payable under the policy for this procedure.

The Complainant subsequently sought cover for a hair transplant procedure to be carried out on his eyebrow. The Complainant felt that this treatment should be covered in the same way breast reconstruction following cancer is covered. The Company declined to cover on the grounds that the proposed surgery was not eligible for benefit under the Terms and Conditions of membership. The matter was then referred to the Ombudsman by the Complainant.

The Ombudsman found that while there were many benefits covered under the Complainant's medical expenses insurance plan and that the limitations thereto were clearly defined he found that hair transplantation was not one of the procedures for which benefit was payable under the plan. The Complaint was not upheld.

€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 cashed in 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 monies 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 Complainants 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.

Grandmother'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 that 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 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, 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 linked 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 €1m 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 categorised as a medium risk investment.

It was clear to the Ombudsman that the Complainants 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 and 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 Complainants 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 Complainants' 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 Complainants' 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 Complainants, 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 breakage-fee in the fixed rate instruction form was both clearly constructed and adequate to describe the salient features of the breakage-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 benefiting 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 benefited 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 investment 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 criticised. 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 Gardaí 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 policyholder's 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.

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