Vincent Cunningham v **Friends Provident (Unofficial version)**

Reigate County Court

March 9 2006-05-16

Deputy District Judge Read:
1 This is a claim made by the Claimant for compensation to redress the mis-selling of an endowment policy sold to him by the Defendants.

2 The evidence that I have had in this matter is the entire set of pleadings, the parties' witness statements, and I have also had the benefit of hearing from the Claimant and the Defendant's representative.

3 The history of the case is that the Claimant took out a 25-year endowment policy from the Defendants in and around the 11th November 1991. He did this to secure a second mortgage to run concurrently with an existing endowment mortgage which had only 22 years left; I think the date is the 12th May 2014. The Claimant says that he should not have been advised to take out the policy at all; in fact he should have been given the recommendation to take out a repayment mortgage. Whatever, he should not have been sold a policy where the term was 25 years instead of 22 years, or such that the impact on him was that he could not redeem his mortgage in 22 years' time.

4 It is admitted by the Defendants that there has been a mis-selling. However, the matters in issue are now somewhat different. There are two issues. Those are, is the Claimant now statute-barred under the Limitation Act of 1980 from making this claim altogether? The second issues, if he is not statute-barred, upon what basis should he be compensated? hould he be compensated on the basis of the difference between the value o the policy and what it would be for a 25-year repayment mortgage, or a 22-year term?

5 Clearly here, the burden is upon the Claimant to prove on a balance of probabilities that first of all he is not time-barred from bringing this application. Second, in the mis-selling of the policies it is appropriate that 22 years are used as the base-line for calculating the compensation to him, which according to page 130 in the bundle, is going to give him a sum of £5,068.17 as opposed to the calculation which is presented at page 135 which is based on a 25-yer term, which is £3,464.39.

6 I make the following findings. The first finding I make is that the Claimant knew and was fully aware from the start of the policy that this was for a 25 and not a 22-year term. This in fact did not worry him at all, not to begin with, anyway. It was only later when he realised he had been mis-sold the policy that he became concerned.

7 I accept the reason that he gives for this, and I think he gave his evidence very well. He says he was told that he could surrender the endowment policy earlier, at the 22-year point, when there is bound to be enough to cover the mortgage at that point.

8 He was not given any financial warnings at the time that he should take out a repayment mortgage. He was not even given a warning that if he surrendered his endowment policy early, he could make a substantial loss.

9 My second finding is that everybody agrees, and it is not in issue, that there has been mis-selling of the policy. The Defendants say that this is because he was never properly advised of the risk that the endowment policy may not repay the mortgage. The Claimant says the Respondents mis-sold the policy on every single aspect, and I have to say I am inclined to agree with the Claimant on this, as I will go on to explain.

10 Let us first look at the first issue, the statute-barred point. I think we have to distinguish between the Claimant being prevented from making a complaint to a government body, and making a claim to this Court. I believe that the Claimant followed very diligently the guidelines that were given to him by the Defendant in their communications with him and the financial Ombudsman service. For what it is worth, I think that the independent assessor's conclusion was in the realm correct. He considered that the Ombudsman was wrong in rejecting a Claimant that was out of time, on the basis and I think I would agree, it is probably an abuse of the process, looking at the regulations. In fact those regulations are not ones that I have to consider today.

11 Obviously what we are concerned here with today is to look at the Limitation Act of 1980: is the Claimant barred in law from making this claim? We have to go to the law itself; I will read out Section 14A(4). It says "The period of limitation. That period is either six years from the date on which the cause of action accrued…" – which, when we look at the policy, that would go right back to 1991 – "…or three years from the starting date as defined by subsection (5) below, if that period expires later than the period mentioned in Paragraph (a) above".

12 "So for the purpose of this section…", this is Section (5), it says "…the starting date for reckoning the period of limitation under Section 14(4) of the above, is the earliest date on which the plaintiff, or any person with whom the cause of action was vested before him first, had both the knowledge required for bringing an action for damages in respect of the relevant damage, and the right to bring such an action".

13 It seems to me, to summarise that, he has in effect three years from the date upon which it first became known to him that there had been negligence and that he was going to suffer a loss. It is from that point.

14 Of course, the argument today has been on "Well, when does that run from?" The Defendants say well, it has to be the letter was sent to him, the first warning letter that was sent on the 8th August 2000. They say that is adequate. They indicated at that particular point in time that the endowment policy was not possibly going to hit target. With all due respect to the Defendants, I do not think that in itself is adequate. I believe it is a warning letter but it does not say in that letter that there is a possibility that the Claimant or other customers that they were sending this letter to could have

been mis-sold a policy, (not just that it was not actually going to hit target), that did not come until a lot later.

15 The Claimant took preventative action. He increased his plan, and he therefore mitigated against any potential loss, and this did not alert him to the possibility he had been mis-sold a policy. There was a lot of publicity by the government at this time. There were rising concerns. I think it is very helpful to look at the note by the Parliamentary Select Committee on the 25th February, where they say that benefit should be given to the customers. They welcomed the way in which the Legal and General had approached matters, and they recommended that they should not use time limits to rule out complaints.

16 It is interesting that following that, various red-alert letters went out from various insurance companies. In fact, that is exactly what the Friends Provident did themselves. They sent that, and of course at that time they were fully aware of the ongoing complaint that the Claimant made.

17 However, leaving that aside, looking at the actual evidence of what has been said here today, the first date, it appears to me, that a Claimant becomes aware that he has been mis-sold a policy (ie the term of the policy and whether as a single person he should not have been sold a policy) all of that arose in September 2002 when at that point he was in the process of changing his mortgage.

18 He therefore has, under the rules, until the 1st September 2005 in which to issue an application to the court. He did son, he issued his application on the 16th June. Therefore he is in time.

19 I therefore reject the claim that he is statute-barred from making this claim. In fact, I have to say, he started his complaint against the Prudential in October of 2002.

20 I do not need, as a consequence of this, to comment on the argument presented by the Claimant that I should consider a postponement of the Limitation Act in any event. Even if I were, I would probably agree with the Defendants on this point; I do not think their action was “deliberate” within the meaning of the Act.

21 That moves us on to the second issue, the question of compensation. The Respondents say that because of the terms of the mortgage compensation must be based on a 25-year term, not a 22-year term, as the Claimant knew all along it was a 25-year term. He had all the information he needed. I do not accept that contention on its own. The fact is, the Claimant did not realise a loss would occur if he surrendered his policy early due to the ballooning effects and the way in which these policies work. The benefits are attached rather late in the term of the policy. I would guess there would have been a very considerable loss, had he done that.

22 I order to consider the right level of compensation, we have to consider what is being compensated for here. First of all, what was the Respondent’s duty of care? Has that duty been breached, and what loss arises?

23 Well the Prudential agents or representatives – (it was not, of course, the Defendants themselves who first advised the Claimant) – had a definite duty of care. I believe they breached their duty of care on two counts, the first being that they mis-sold the policy in its entirety by mis-selling it, rather than a repayment mortgage. However, the second, and significant breach is that they failed to advise the Claimant of the penalties for surrendering early.

24 The loss that of course arises now to the Claimant is that he has a policy which is not worth as much as it would have been had he had a repayment mortgage. I would say that the Claimant should be put back into the position as if that negligence had not occurred at all. In other words, as if he had purchased the repayment mortgage for 22 years. Accordingly, on that basis, I am going to award him the amount that has been calculated on page 130 by the defendants in the sum of £5,068.17.