INSURANCE - IRELAND

Avoidance of life assurance policy for non-disclosure of material facts

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In *Richardson v Financial Services Ombudsman* the High Court recently upheld a finding of the Financial Services Ombudsman (FSO) that an insurer was entitled to avoid a life assurance policy on the grounds of non-disclosure. Significantly, the decision turned on the strength of the proposal form and serves as a useful reminder to insurers of the importance of a well-drafted proposal form.

Background

The life assurance policy in dispute was taken out in 1996 by the claimant's husband, who died in 2013. Following his death, it transpired that before inception he had failed to disclose certain aspects of his medical history. The insurer avoided the policy on the basis that had the full medical history been disclosed before the policy incepted, it would not have been in a position to offer cover. The FSO held in favour of the insurer and the claimant appealed to the High Court.

Decision

The High Court noted that the role of the court in appeals of FSO findings is to consider whether, on an examination of the adjudication process as a whole, the FSO finding was vitiated by a serious and significant error or a series of such errors. In this context, the court considered that the appeal was confined to assessing whether the FSO had committed a serious error by finding that Irish Life was entitled to repudiate the policy, in circumstances where there was no suggestion that the answers provided to the questions on the proposal form were deliberately dishonest or deceitful or where the issues underlying the repudiation could be considered relatively trivial in nature as well as significantly distant in time from the death giving rise to the claim on the policy.

The court noted the well-established test of materiality for non-disclosure in insurance law, in which "every circumstance is material which would influence the judgment of the prudent insurer in fixing the premium or determining whether he would take the risk" and that an insurer may avoid a policy where the insurer proves that there has been a misrepresentation or concealment of a material fact. The court held that the test of materiality is purely objective and the subjective state of mind of the actual insurer is irrelevant.

The court distinguished the judgment of Judge Clarke in *Coleman v New Ireland Assurance plc* (trading as Bank of Ireland Life), noting that the wording of the proposal form in that case required responses to be given to the best of the knowledge of the proposer, permitting a subjective examination of the proposer's state of mind at the time when she responded to the questions at issue in that case. The court concluded that the proposer's subjective state of mind was relevant only in that case because of the manner in which the proposal form was drafted.

By contrast, the court considered that the duty to disclose information in this case was set out clearly on the proposal form, which required the insured to answer all questions "fully, correctly and truly" and expressly warned that the proposer should disclose facts if they were uncertain as to its

materiality. The obligation was not qualified by reference to it being discharged to the best of the proposer's knowledge and had it been so, the court considered that there may have been a different outcome. There was no reason to believe that the proposer told deliberate untruths in completing the proposal form, and in the circumstances he could have been forgiven for omitting the incidents in his medical history. However, the questions on the form were neither ambiguous nor open-ended and they were not answered fully or correctly. While the court expressed some sympathy for the claimant's position, it concluded that there had been a material non-disclosure and the insurer was entitled to avoid the policy.

Comment

Avoidance is generally considered to be a draconian remedy. In recent years, the Irish courts have shown a marked reluctance to uphold avoidance with the result that insurers are often left without an effective remedy. This decision is therefore significant, as it demonstrates that the courts are willing to uphold policy avoidance for material non-disclosure where the proposal form is clear and unambiguous and the proposer's duty to disclose is not qualified by reference to answering the questions in the proposal form to the best of the proposer's knowledge. For insurers, this judgment demonstrates the critical importance of a well-drafted proposal form, which seeks to identify the facts that are material to the risk. For brokers, it serves as a reminder of the significance of advising clients of the importance of providing full and complete responses to the questions on the proposal form and disclosing all material facts.

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