

Ms. Eimear Lavelle
Committee Secretariat
Committee of Public Accounts
Leinster House
Dublin 2



An tOmbudsman Pinsean
Pensions Ombudsman



PAC-R-221

21 December, 2011

**Correspondence 3.6
Meeting – 12/01/2012**

Dear Eimear,

Further to your letter of 14th December 2011 and our subsequent telephone conversation, I enclose a note, which I have kept as brief as possible, on the matter raised with the Committee by Councillor Philip Cantwell, of Trim County Council.

I note that the Pensions Board has also been sent the correspondence and I have no doubt that they will provide a comprehensive note of the history of Councillor Cantwell's involvement.

However, I have decided that I should do a note on the technical background, which might assist the Committee in its deliberations, as technicalities have arisen over the years which have complicated this particular saga.

Yours sincerely,

Paul Kenny
Pensions Ombudsman

Encl.



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To the Committee of Public Accounts

Note from the Pensions Ombudsman

Matters raised by Councillor Philip Cantwell of Trim County Council

The Committee will be aware from the papers provided by Councillor Cantwell that the matter which he is raising with them goes back over a very long number of years. I do not intend to go into the history of the particular case but I feel that I should provide some technical background which might be of help to the members of the Committee in assessing the matter that is now before them and the report which will undoubtedly be provided by the Pensions Board.

Income Continuance Plans are known by various other names, such as Permanent Health Insurance, Prolonged Disability Insurance, and so on. Regardless of what they are called, the objective is to provide those covered by them with an income during permanent or temporary disablement. Typically, they pay out after a “*deferred period*”, which can range from as little as 4 to as many as 104 weeks – clearly, the cost of the cover will be influenced by the length of the deferred period. They are generally designed to cease payment when the person reaches whatever is his/her normal pension age, or in the event of previous recovery from the illness or injury. Many also contain “*rehabilitation*” clauses, which enable a partial payment to be made in the event of partial recovery from illness or as an aid to rehabilitation, if the earning capacity of the individual is still impaired.

This cover may be taken out by individuals themselves, in which case they can claim tax relief on the premium. The cover we are concerned with in this case, however, is cover provided by an employer.

These schemes are often provided by employers in conjunction with occupational pension schemes. It is important to remember that they are not part of the occupational pension scheme but they do interact with it. Critically, the premiums that might be paid by the employer are not exempted, as pension scheme premiums are, from being treated as benefits in kind on the employees. For that reason, in order to get around that particular problem, these schemes are typically written so that the employer is the beneficial owner of the policy. When a member becomes disabled, a claim is made on the policy and the proceeds are paid to the employer. These are then passed on through the PAYE system as if they were salary but legally it is at the employer’s discretion that this is done. If the member were beneficially entitled to the proceeds of the policy, a benefit in kind would be charged on the employer’s premium.

In addition, the employer sponsored policies typically contain what is called a “*pension premium allocation*”. This is designed to pay the contribution payable by both employer and employee to the occupational pension scheme for as long as the disablement lasts, so that the member can continue to accrue benefits in the pension scheme and – critically – will also continue to be covered for any mortality

benefit provided under the scheme rules. It is common, though not universal, for both the income benefit and the pension premium allocation, to increase during payment at up to 5% per annum.

Although they interact with occupational pension schemes, Income Continuance Plans are not within my jurisdiction as Pensions Ombudsman – they are contracts of insurance and therefore fall into the jurisdiction of the Financial Services Ombudsman. Except to the extent that they are insurance policies, they are not regulated – that is their conduct does not come under any particular jurisdiction and there are no formal rules governing the way they are run. I have suggested on a number of occasions previously that it would be appropriate to bring them into the jurisdiction of a regulator such as the Pensions Board, simply because, where they exist, they are inextricably linked to the occupational pension schemes that they live alongside.

There is one other matter which may be relevant when the Committee comes to consider the history of Councillor Cantwell and his colleagues in Tara Mines. The original policy under which the Tara Mines workers were covered was set up with the Norwich Union Fire Insurance Society. Following on the First Life Directive of the EU, Prolonged Disability Insurance was reclassified as a life assurance product rather than a general insurance product. Norwich Union left the market, although it continues to pay those who were covered under its original policies.

There was one critical difference between the Norwich Union contract and the later ones provided by such companies as Irish Life, Canada Life, etc. The Norwich Union policy did not cease to pay if the contract of employment of the member was formally severed. It would, naturally, have suited companies to terminate the formal contract of employment, otherwise the nominal “*head count*” could be quite big compared with the actual active workforce in an industry such as mining, which is dangerous.

The new contracts will cease to pay if the contract of employment is terminated. Thus, in Tara Mines, there are two categories of disabled worker – one, covered by the old Norwich Union contract, does not have a continuing contract of employment with the company, while the other cohort, which is covered by the later arrivals in the market place, continue to hold a formal contract.

I will be pleased to provide the Committee with any further information it may require.



Paul Kenny
Pensions Ombudsman

20th December, 2011