

The Hon. Mr. Justice Jack : QBD. 5th May 2006.

Introduction

1. This action is brought by the claimant, Mrs Patricia Wright, on her own behalf and on behalf of her late husband's estate, against their bank, HSBC Bank plc, formerly the Midland Bank. Mr and Mrs Wright first raised complaints as to the Bank's conduct in February 2001. In a letter dated 5 October later that year the Bank made an offer of settlement. On 11 October Mr Wright suffered a severe stroke, and tragically he died on 27 October. By a letter dated 7 February 2002 Mrs Wright accepted the Bank's offer subject to the Bank entering into particular financial arrangements – which the Bank has done. Mrs Wright seeks to rescind the settlement agreement which was then reached, on the grounds, among others, of misrepresentation, undue influence and duress. She claims damages in respect of the original claims and in respect of what was said to her prior to the settlement. The Bank has not made a counterclaim for monies owed by Mrs Wright.
2. Mrs Wright presented her own case. She did so with ability and a thorough grasp of the documents. She proved equal to the task of cross-examination, though I should say that there were some key areas where I did some probing myself in an attempt the better to understand what had occurred. There was, initially at least, some lack of clarity as to how Mrs Wright put some of her claims, and as to the damages which she said followed from the Bank's breaches of duty. But I hope that this was sufficiently clarified during the course of the trial.
3. Mrs Wright pleaded her case in particulars of claim containing 81 concise paragraphs. The Bank's defence drafted by its solicitors contained but 8. Paragraphs 3 to 7 pleaded the settlement. Paragraph 2 stated that the Bank did not plead specifically to the paragraphs of the particulars of claim but each and every allegation was either denied or not admitted. If Mrs Wright had been represented, it is likely that this paragraph would have been struck out and the bank forced to admit her claims or to set out what its case was in respect of them. It seems surprising that this was not picked up at a case management conference. The trial began before me on 20 March 2006. On 10 March Burton J. had heard Mrs Wright's application for permission to amend her particulars of claim to add detailed allegations of breach of statutory duty in the selling of regulated financial products. I was told that the application was opposed on the basis that, if it were granted, the Bank would require an adjournment of 112 days to prepare its case in answer to the claims – which, it must be remembered, had always been there. Burton J. made an order granting permission to amend, requiring the Bank to serve any further witness statements by 15 March, and that Mrs Wright serve any witness statements in response by 20 March. He refused an adjournment. The Bank served no further witness statements. Burton J. had asked counsel if the Bank would be amending its defence and had received the answer that counsel had no instructions as to that. The position before me was that Mrs Wright had to prove the claims for damages, and she was cross-examined about them. I heard no evidence from the Bank in relation to the events prior to February 2001, although, of course, there was substantial documentary evidence contained in the files assembled by Mrs Wright for the trial. I heard evidence on behalf of the Bank from Mr Richard Wilton and Mr Bernard Goldberg in relation to the settlement agreement. It was, in my view, unfortunate that neither of them had had an opportunity to refresh their recollection of events by reading the files prior to going into the witness box. On Mrs Wright's side I heard evidence from Mrs Wright herself, from her daughter, Mrs Victoria Martin, and from Mrs Judith Simmonds who had given Mrs Wright secretarial assistance.
4. At the start of the trial I made an order under CPR 19.8(1)(b) with the Bank's consent that, as Mr Wright had no personal representative, Mrs Wright should be appointed to represent his estate.
5. I should record that at the start of the trial and in her closing submissions Mrs Wright raised the possibility of an application by her for summary judgment under CPR Part 24. She referred to the form of the Bank's defence and the absence of evidence from the Bank on the original claims. It seemed to me that such an application would not add anything to her case because I had to decide whether the claims were good whether I did that in the ordinary context of the trial or in the context of Part 24.
6. I would usually set out after the introductory section of a judgment the claims that were made. I think though that in the circumstances here I will do better to set out the history in some detail first because the background to Mrs Wright's claims will then be apparent and they will be the more easily understood. I have concluded also that I should not here take the route of deciding the issues relating to the settlement and, if they are to be decided in favour of the bank, excusing myself from expressing a view on the validity of the claims which were settled – though that is a course which would then be open to me.

The events

7. I should begin by saying a little about Mrs Wright and her husband, particularly about her, because the degree of her experience and of her understanding is very relevant to some of the issues. Mrs Wright is now 55 and is in the second year of a law degree at Sussex University. Her daughter was born in 1973, and from 1977 to 1980 she ran a shop for her father. In 1980 she obtained employment as a personnel officer in a factory, but it closed in 1982. Later she ran a catering business from her home. By 1991 her marriage was in difficulties. I think that it was that at about this time that she and her husband found that he had been being overcharged by his bank on his business account. They achieved a successful settlement with the bank. They separated in 1992. She met Mr Wright in late 1992 or early 1992. He was a solicitor. He had a business as a sole practitioner and specialised in banking work. He was 9 years older than her. He did not have good health. In 1992 Mrs Wright became a founder member of the Bank Action Group. She was the national coordinator. The function of the Group was to lobby and obtain publicity in cases where it was thought that banks had not treated their customers correctly, in particular small businesses. Towards the end of 1994 Mrs Wright left the Bank Action Group to start her own business as Patricia Griffiths Associates - PGA. She acted as a consultant to small businesses which were in dispute with their banks. A number of her clients were wives who were contesting the security given over their homes by their husbands to support their business borrowings. Initially she charged on an hourly basis with an additional contingency or success fee element. She and Mr Wright were married in 1995.
8. Mr and Mrs Wright lived initially in Addlestone in Surrey. In 1994 Mrs Wright commenced banking with the Bank's Addlestone branch. They later moved to Chertsey where they lived in rented accommodation and each rented offices. In 1997 they decided to buy a property in Wales and to carry on their businesses from it. The property they found was Tan y Coed in Carmarthenshire. It was reasonably large, and was remote. The purchase price was £120,000. The Bank agreed to provide a capital repayment mortgage of £115,000. It required that the mortgage should be joint, supported by a joint life policy taken out with the Bank. This was because Mrs Wright's earnings were then insufficient to support the mortgage on her own. The mortgage payments were to be £964 per month. The life cover was quoted at £211 per month. Mrs Wright telephoned the manager at Addlestone to ask if it was all right to exchange contracts for the purchase. He said that it was, and they did.

Later the Bank received a report of Mr Wright's health which caused it to change the quotation on the life cover to £530 per month, later reduced to £374 per month. Mr and Mrs Wright found the payment of this premium a considerable burden.

9. In October 1998 Mr Wright gave up practice as a solicitor and became a partner in PGA, although it was in June 1998 that he had become a signatory on the PGA account with the Bank. At about this time PGA began taking on some clients wholly on a contingency fee basis. This was later to cause problems when even though success was achieved payment did not follow. But in July 1998 Mrs Wright was optimistic. On 28 July she wrote to the Bank explaining why the overdraft limit on the PGA account of £3,000 had been exceeded by reason of a client not paying and asking for it to be increased to £7,000. She anticipated a turnover of at least £96,000 that year, and wanted £200,000 on the next year. The turnover for the previous year had been £42,000. On 20 August 1988 PGA's accountants wrote to the bank confirming that the indication was that the turnover for the year would double, and saying that the working overdraft was not adequate due to 'the timescale of collecting debtors especially the large ones'. They suggested £10,000. Mrs Wright wrote asking for that on 26 August. On 4 September the Bank offered an overdraft of £10,000 at 4% above base rate, which gave 11.5% p.a. Thus began a train of increases in the borrowing of Mr and Mrs Wright with repeated explanations from Mrs Wright that clients owed sums which would soon be paid. It is a familiar story, and in such situations as the overdraft increases the difficulties of the bank increase with those of their customer.
10. In September 1998 Mrs Wright invested £10,000 in a 3 year high interest deposit bond with the bank.
11. On 20 October 1998 the overdraft limit on the PGA account was increased to £15,000, and the Bank agreed to provide Mr and Mrs Wright with a separate increase in their overdraft on their personal joint account from £1,000 to £5,000 for 3 months. This followed from a letter from Mrs Wright of 16 October which is missing from the trial papers. It is apparent that it stated that £30,000 should be received in the next 3 months following the £15,000 limit would revert to £10,000. At this time Mrs Wright also opened a Gold MasterCard personal account with an overdraft limit of £2,500. All this was sanctioned by Mr Richard Wilton, the branch manager at Woking. Addlestone was a sub-branch of Woking.
12. Meanwhile Mr and Mrs Wright had been considering how they might reduce their outgoings, in particular on the expensive joint life policy supporting the mortgage on Tan y Coed. They wanted to replace the joint mortgage with a mortgage in the name of Mrs Wright only, which should now be acceptable because of the increased income of PGA. This would be supported by a life policy entered into by Mrs Wright, which would enable the cancellation of the joint policy. This was raised by Mrs Wright with Mr Wilton when they discussed the new overdraft limits by telephone. Mr Wilton agreed with her that Mr Matthew Halksworth should review the position and come back to her 'not only in connection with the mortgage but also the possibility of pensions etc.' I quote from Mr Wilton's memorandum of 20 October. Mrs Wright's evidence was that she had no interest in a pension at this point in time: she was looking to reduce her outgoings rather than to increase them. The question of a pension had been discussed in August 1995 between Mrs Wright and Penny Fowler, a financial planning manager, on behalf of the Bank. Ms Fowler had proposed pension contributions of £150 per month. Mrs Wright was not in a position to embark on that then. Ms Fowler had recommended a review in 6 months, but that had not occurred. I deduce from this that Mrs Wright was interested in contributing to a pension when she was able to afford it. I do not accept that when the matter came up again in October 1998 Mrs Wright had no interest in it: I can only conclude from the record that it was something she was interested in.
13. In December 1998 the overdraft limit on the PGA account was increased from £15,000 to £25,000.
14. Mr Halksworth was not in touch with Mrs Wright until the next February. Meanwhile a customer profile was printed by the Bank on 2 December 1998. It showed that the personal joint account stood at £6,567 overdrawn and by a note in Mr Wilton's hand that the PGA account stood at £16,000 overdrawn. It has on it some further notes in Mr Wilton's hand: 'Prepayment penalty. Length of mortgage/life cover. Life policy premiums. Pension/Term Life. Is mortgage pre-payment/pension linked.' I have concluded that it could only be a guess if I purported to deduce how and when these notes were made, and what their significance is. So I take no account of them.
15. A meeting was then set up with Mr Halksworth and Mr Wilton for 5 February 1999. By this time Mr and Mrs Wright had the idea of purchasing a flat in Penarth as an investment. It would be bought with a mortgage from the Bank and would be let. In preparation for the meeting Mrs Wright prepared some notes as to their financial position. This included a figure for their current monthly expenditure of £3,893 and their anticipated monthly expenditure of £2,467 after the new arrangements including those for the flat. The flat was to bring in rent of £2,400 p.a. There was no reference to a pension.
16. Mr Halksworth was a financial planning manager. He appears to have stepped into the shoes of Ms Fowler. The meeting on 5 February was with him. Mr Wilton was not present until the end and he did not take part in the discussions. Mr Wilton was not qualified to act in the sale of products which were regulated under the Financial Services Act 1986. I will return to what occurred at the meeting.
17. On 16 February 1999 Mr Halksworth wrote to Mrs Wright saying that he had agreed in principle to proceeding on the basis of the existing mortgage on Tan y Coed, an interest only equity release loan of £20,000 secured on Tan y Coed, a £50,000 mortgage for the flat, pension term insurance of £182,000 on Mrs Wright's life at £75.89 per month, a pension for Mrs Wright at £455 per month with a pension contribution protection (a sickness insurance) at £22.75 per month. He calculated that the net cost after tax relief on the pension term assurance and the pension and after crediting £550 per month rent would be £1044.03 as opposed to the existing mortgage cost of £1339.02. He ended his letter saying that they should proceed shortly so the equity release loan was available to reduce the overdraft positions and to enable the cancellation of the joint life cover. He hoped to hear from her. His next letter dated 22 February refers to their 'recent telephone conversations'. He must have been instructed that Mrs Wright wished to go ahead. He enclosed various documents including application forms for the pension and the equity release loan and a 'Financial Review "Summary of Needs"' for her to complete and sign. The Review included a section headed 'Retirement' in which it was stated that the rental would allow Mrs Wright to meet the pension contributions. Mrs Wright clearly read the document because she noted on it that she wished to register the flat in joint names 'for capital gains situation as discussed'. She signed it on 23 February 1999. On the same day she signed the pension application form which provided the life cover as well as the pension at the costs stated in Mr Halksworth's letter of 16 February. Payment was to be direct debit. The commencement dated inserted by Mr Halksworth was 'ASP'. Mrs Wright also completed a direct debit form.

18. On 26 February 1999 Mr Wright wrote to Mr Halksworth instructing him to cancel the joint life insurance once the new policy – that is the pension term insurance - was issued. On 28 February Mr Halksworth wrote confirming his recommendations which were set out on an accompanying page. On 28 February Mr Halksworth also completed a 7 page internal document headed 'Personal Financial Planning Review' in which he recorded facts concerning Mrs Wright. It records her as a non-smoker, whereas she was a smoker. It does not mention the £10,000 bond. Mrs Wright said that she was not asked about smoking or about her savings by Mr Halksworth. Mrs Wright has also complained that Mr Halksworth did not take into account a life policy which she had taken out in 1995 with a sum assured of £50,000 with a premium of £34.24. The policy was held in trust for her daughter. I note that Mrs Wright did not include this premium on the statement of her monthly expenditure, which she prepared for the meeting on 5 February.
19. On 30 March 1999 Mrs Wright gave an 'all monies' charge to the Bank over Tan y Coed. On 8 April 1999 the Bank wrote to Mrs Wright saying that the equity release loan of £20,000 had been completed. On 14 April the Bank sent Mrs Wright a cancellation notice and cancellation form for the pension plan together with a key features document. On 20 April Mrs Wright wrote to Mr Halksworth. She was concerned to note that the first pension premium had been debited on 30 March while she had not yet received the mortgage offer for the flat. She wrote 'It was agreed, on your advice, that I would also take a Midland pension to be mainly funded by rental income from the flat.' Mr Halksworth did not reply. It is possible they spoke by telephone, but there is no evidence of that. On 11 June Mrs Wright was sent details of the pension term assurance. The premium was £118 per month as opposed to the figure quoted by Mr Halksworth of £75.89. The difference is apparently explained by a medical report on Mrs Wright and her smoking. On 19 June the Bank wrote saying that Mrs Wright's personal account was overdrawn at £3,970 against its limit of £3,000. As she noted on the letter, this was the account from which the pension premiums were coming. On 24 August Mrs Wright wrote to the Bank saying that the purchase of the Penarth flat was completed on 16 August. The next letter on the file is her letter of 19 October to Mr Spennwyn, the business banking manager at Woking. He had been chasing her because of the overdrawn state of her accounts. She alleges that he told her that she should sell the flat to reduce her commitments. In the letter she set out fees that were outstanding totalling £14,538 and referred to new work taken on. She stated that she had put the flat on the market at £82,500. She had paid £69,000, with a mortgage of £57,000. She said that the cost of a new web site, difficulty in pursuing a debt and not finding a tenant for the flat, had created difficulties: she said they were short term problems, if the Bank could bear with them. On 7 November she wrote again apologising for the accounts being in excess, referring to fees of £24,385, apologising and again asking the Bank to bear with her. She wrote a similar letter on 16 December. She said:
- "We have not had any further offers on the flat I am, as you know, paying the mortgage of £277 a month on the flat, together with almost £500 a month on the pension I had to take at the time that I obtained the mortgage. This is £777 a month that it was anticipated that the flat rental would produce £600 a week towards. Obviously this has not happened, so the only thing I can do is to sell the flat and I can assure you it is being actively marketed.*
- The only other thing I can realistically do to reduce this figure, is to cancel the pension. I am considering my options on this, particularly in view of the new stakeholder pensions, I am really loath to take any action at the moment until all the monies come in, but I do need the bank's support during the interim period."*
20. It is clear that by the year end the Bank were concerned at the borrowings and were very anxious to reduce them. Mrs Wright prepared lists of fees outstanding at 27 January 2000 at £48,021, and at 7 February 2000 at £46,379. In February a sale of the flat was agreed at £77,500. Completion took place in March. The sum due on the mortgage was £59,143 as at 31 March. This included 6 months penalty interest for early redemption. Mrs Wright objected to that in a letter to Mr Spennwyn dated 12 March. In that letter she referred to outstanding fees. She also enclosed the accounts for PGA for the year to 31 October 1999. They showed a profit of £52,793 but if expenses claimed for use of home and depreciation were added back it was over £60,000. She asked for a discussion. At about this time Mr and Mrs Wright also put Tan y Coed on the market. On 14 March they accepted an offer on it at £175,000. The limit on the business account had meanwhile been raised to £40,000. On 16 June the Bank wrote to Mrs Wright saying that at her request the pension contributions had been reduced to £105 per month inclusive of contribution protection. Mrs Wright said that this resulted from a suggestion by Mr Spennwyn. In May 2000 the limit on the overdraft for the PGA account was increased from £25,000 - at which it seems it had stood since December 1998, to £40,000. On 20 June the Bank minuted that the sale of Tan y Coed had fallen through and that the PGS overdraft was to be left at £40,000. On 26 July Mrs Wright wrote saying that they had accepted a fresh offer on Tan y Coed at £178,500 and informing the Bank as to outstanding fees. This sale did not proceed: I do not know why. On 4 September Mrs Wright wrote asking the Bank for rates of interest charged on their accounts since January 1999. She did not get a reply until 20 February 2001.
21. On 25 September 2000 Mr Wright collapsed with heart failure and was admitted to hospital. He was admitted again in November. He was advised to move to a drier climate than Wales. In the meantime Tan y Coed had been taken off the market. Following this advice it was put back on again.
22. A Bank call report dated 24 January 2001 noted that Mrs Wright had requested an increase in the PGA overdraft to £45,000 pending funds to be received from a client called Stone. Tan y Coed was on the market for £220,000. The mortgage and equity release loan totalled £126,000. The increase in the overdraft was agreed until February 2001. On 6 February this was extended to 16 February as the Stone monies had not been received. A call report dated 19 February refers to a meeting having been arranged for 26 February to discuss repayment, and states that the increased overdraft limit had been extended to 27 February: the value of Tan y Coed was put at £190,000. On 19 February Mrs Wright wrote to the Bank by fax saying that at the meeting she wanted to discuss her personal pension plan, the equity release loan, the transactions involving the Penarth flat, her life insurance cover, interest charges, and between account transfers. The Bank's brief memorandum as to the meeting states that Mr and Mrs Wright had requested it to make a regulated complaint. So the meeting is recorded as having had two purposes.
23. Mr Wright made a manuscript note of the meeting on 26 February 2001. The Bank first asked about two outstanding debtors, Laity and Stone, and the sale of Tan y Coed. Mrs Wright provided updates on those – which are not recorded, but said that these were not the real reasons why the overdraft had increased. For that she said one had to go back to 1997 when Tan y Coed was purchased. That was discussed. Then the 1999 transactions were discussed. Mrs Wright said that Mr Halksworth had made it clear they had to take the pension (if the rest was to happen), and they were not happy with that. Later she said that she could not cancel the pension, and that it was the premiums for the life insurance and the pension which meant they could

not pay the mortgage for the flat. The note may then say that Mrs Wright knew that the commission would have been clawed back if she had cancelled the pension. Mrs Wright had prepared a schedule of losses which she said she had suffered by the Bank's mistakes. It totalled £33,879. It includes the costs of the joint life insurance in 1997/9, the pension plan contributions, the term assurance contributions, the sale and purchase costs of the flat, the loss of increased value in the flat if they had continued to own it, and interest. A factor which I have to take into account is the possibility that these claims were raised because at this time a point had been reached at which it was becoming clear to both sides that the overdraft indebtedness could not be repaid from the business.

24. A manuscript note of the meeting was also made by Mr Trievnor, a financial planning manager. He recorded that Mr and Mrs Wright alleged that Mr Halksworth had "insisted on a pension being set up." The note stated at its end that Mr and Mrs Wright had requested that the pension and life cover (i.e. the pension term insurance) were stopped with immediate effect. Mr Trievnor had said that the pension would be stopped but the life cover should not be cancelled until alternative cover for the existing loan could be arranged. The latter was confirmed in Mr Trievnor's letter to Mrs Wright of 5 March. On 14 March the Bank wrote to Mrs Wright saying that the pension plan was now shown as paid up and had a value of £5,822.
25. On 22 March 2001 there was a meeting between Mr and Mrs Wright and Mr George Kennedy, an area sales manager of the Bank. There is no record of the meeting. Following it Mrs Wright wrote to Mr Kennedy pointing to a number of errors in the Financial Planning Review, or 'fact find' completed by Mr Halksworth in February 1999. A Bank memo of 2 April records that the Bank had overcharged interest on the PGA account in the sum of £491.62. This was subsequently credited to the account on 18 May together with an *ex gratia* payment of £250. On 2 April Mrs Wright wrote to Mr Wilton complaining at lack of progress. Mr Wilton replied on 4 April. He did not, and could not, deal with the regulatory complaints. He denied that Mrs Wright had been influenced by the Bank in the sale of the flat. He said that it was her decision based on the financial reality of the situation and the absence of a tenancy. A Bank report dated 6 April records the indebtedness on the PGA account as £50,454 against a limit of £45,000 and a total overdraft indebtedness of £61,353 against an overall limit of £53,500. Mr Wright replied to Mr Wilton with a long letter on 9 April. On page 4 she described what Mr Spennwyn had said to her as to selling of the flat. Also on 9 April Mr Stephen George, a regional sales manager responded to Mrs Wright's regulated complaints. He stated that the advice of a pension was sound. He concluded that there had been no mis-selling of any financial product. The correspondence continued: I need not review it further for the purpose of this judgment.
26. On 2 July 2001 Mr Wilton recorded that the money from Laity had not been received and the Bank might shortly have to return items and call in the mortgage. On 12 July the Bank wrote to Mrs Wright referring to an offer on Tan y Coed for £195,000 and that Mr and Mrs Wright's intention to move to France: they wanted to maintain an overdraft facility on the PGA account of £25,000, which the Bank was prepared to look at. On 23 July, following a meeting he had had with Mr Halksworth, Mr George wrote to Mrs Wright justifying the pension arrangements. On 24 August Mrs Wright wrote about her complaints to Mr Bernard Goldberg, a senior compliance manager for the Bank. She copied her letter to Sir John Bond, the bank's chairman. Mr Halksworth set out his recollection of the basis of his advice in a memo dated 28 August. On 28 August Mrs Wright wrote a long letter to Mr Goldberg. In it she stated that having been ill with heart failure and pneumonia her husband had been advised to move to a drier climate and so she had obtained a sale of her property, but she had found that if she proceeded she would incur a substantial interest penalty on the early repayment of the mortgage: she was not prepared to pay that: should Mr Wright be forced to endure another winter at Tan y Coed, she would hold the Bank responsible for the consequences. The letter concluded that she was entitled to be put back into the position she was in before 'this whole debacle occurred'. On 28 August Mrs Wright wrote directly to Sir John Bond.
27. Mr Goldberg's enquiry into Mrs Wright's regulatory complaints, that is her mis-selling complaints, resulted in a PFS complaint report dated 17 September 2001. He stated that the pension term policy could have been done more cheaply with a decreasing term policy for some of the liability, and that the Bank was also at fault in failing to correct 'Mrs Wright's misconception about the Pension Plan after the first premium.' Mr Goldberg wrote to Mrs Wright on 18 September. He set out the Bank's fault with regard to the pension term assurance. As to the pension, he said that the documents showed that she had had sufficient income to support it without the income from the flat, and that Mr Halksworth was not to be taken as having advised that the rental income from the flat would be used to cover the premiums, and she knew that the premiums had commenced before the flat's purchase but she had maintained them. That, it appears, was the misconception he had referred to in his report, namely that Mrs Wright had thought the pension premiums would come from the rent. He suggested a meeting with Mr Chubb, area manager, to decide how best to make redress to her.
28. A meeting with Mr Chubb was arranged for 27 September 2001 in Bristol. It involved Mr and Mrs Wright in a long journey. At the meeting Mrs Wright reviewed her complaints. She was told that the Bank had no offer to put to her to resolve the matter. Mr Wright said the minimum figure was £80,000 but they were looking for a figure nearer £100,000. The meeting broke up unpleasantly. As the meeting had been arranged to discuss how the dispute could be resolved, the Bank is rightly to be criticised for not having any proposal to make. It must also be said that no offer which the Bank might have then made would have come anywhere near what Mr and Mrs Wright said they were looking for. On 28 September Mrs Wright wrote a strong letter of complaint to Sir John Bond. In it she proposed that the Bank should agree to extinguish all indebtedness, whether by way of overdraft or mortgage, which she put at £195,000. Meanwhile the Bank continued to make internal enquiries and on 3 October Mr Halksworth made memo further describing his part.
29. On 5 October 2001 (a Friday) Mr Goldberg sent Mrs Wright a without prejudice letter. It offered in respect of the pension term assurance to pay £538.34 being a premium difference over 31 months of £496 plus interest. It recorded that the £491.62 together with the *ex gratia* payment of £250 had been credited to the PGA account on 18 May 2001 in respect of overcharging of interest. In respect of alleged unauthorised transfers between accounts, it stated that the Bank's prior offer to reverse the transfers stood. It rejected the allegation that the pension had been mis-sold, and made no offer in respect of it. In respect of a recent suggestion that Mrs Wright had had insufficient net taxable income to support the premiums, it offered to refund any excess and offered up to £100 for her accountant to provide the figures. It offered £500 for Mrs Wright's time and trouble in pursuing the case. It ended by reminding Mrs Wright of her ability to take the case to the PIA Ombudsman.
30. This letter was seen in draft by Mr Wilton. It is unclear how complete it was when he saw it. The offer of £500 was an addition. It is unclear whether the letter was sent by fax or by post. Most communications with Mrs Wright at this time seem to have been by fax. Mrs Wright said she did not see the letter until a copy was sent to her in January the next year. A memo by Mr Golberg dated 9 October confirms that it was sent on Friday, 5 October.

31. On 9 October 2001 (a Tuesday) Mr Wright faxed to Mr Wilton a letter which he did not show to his wife. He said that he was very concerned about her health: she had been told not to work and her cholesterol level was dangerously high. He said they were convinced that they had a very good case, and the damages would be considerable, which had been confirmed by counsel verbally. He referred to the Bank's case as to the pension, but said in view of their overdraft position at the time its affordability must be questioned. He referred to an offer on Tan y Coed (for £200,000) and the total indebtedness to the Bank of £193,000. He said that after sale costs there would be no equity. If they sold, they would be homeless and would not qualify for re-housing by their Council. He proposed that they should move to France and the Bank offer them a long term interest loan of £90,000 which would be secured by the policy on Mrs Wright's life for £182,000. It is apparent that Mr Wright had no knowledge of the Bank's offer when he wrote this letter. Mr Wilton replied the next day saying that because of confidentiality rules the proposal must come from Mrs Wright. A file note of 10 October shows that the Bank was considering Mr Wright's proposal. On 10 October Mrs Wright wrote to a journalist at the Times about the case. It is plain that Mrs Wright had not received the letter of 5 October. At some point Mr Wright drafted four pages of particulars of claim against the Bank.
32. On 10 October 2001 the Bank's chief operating officer, Mr David Baker, wrote to Mrs Wright in the absence of Sir John Bond in response to her letters to Sir John. His letter did not refer expressly to Mr Golberg's letter of 5 October: it said '... I thought it might be helpful if Mr Golberg, in response to your letter, clearly sets out the details of the Bank's position.' The wording is curious because it suggests that Mr Goldberg is to write rather than has written. This may be because that Mr Baker apparently rewrote the draft of the letter himself and he was at some remove from Mr Goldberg.
33. On 11 October 2001 Mr Wright suffered a major stroke. He was admitted to hospital, where he died on 27 October.
34. On 12 October 2001 Mrs Wright replied to Mr Baker's letter of 10 October. She informed him of Mr Wright's stroke, for which she blamed the Bank. Her letter was acknowledged on 17 October.
35. The funeral of Mr Wright took place on 3 November 2001. On 5 November Mrs Wright telephoned Mr Wilton. His note records that she was clearly confused and had said she was under sedation. She had telephoned at the request of her solicitor – Mrs Wright said that this was a friend, to advise the Bank as she would be looking to transfer the PGA account and the personal joint account into her sole name. Mrs Wright requested the cancellation of a standing order relating to her husband. Mr Wilton invited her to make contact with him if there was any aspect she wished to discuss: he volunteered to meet her half way or to go to Tan y Coed if necessary. The note recorded the overdraft liability as £76,073. Mr Wilton recorded that the Bank was carrying the overdraft position in view of Mr Wright's death but the Bank would shortly arrive at the point where it needed to ascertain levels of income and, in the fullness of time, Mrs Wright's intentions as to Tan y Coed. A bank memo of 6 November points out that all would be well if the joint life policy had not been cancelled and averted to the possibility of Mrs Wright raising this as a claim against the Bank: it said the Bank must be certain that there was no pressure brought on her to cancel the policy. This was answered in a memo of 15 November saying that it was crystal clear that it was Mrs Wright who had sought the change.
36. On 12 November 2001 Mrs Wright wrote to Mr Wilton enclosing a copy of the death certificate. She said: 'I will need to see you to discuss the way forward before too long. The purchasers for the house have advised me they still wish to go ahead, but they have taken a rental for six months close by, in order to give me time to decide what I want to do. They are very nice people.' On 14 November Mr Wilton replied. He enclosed a list of standing orders and direct debits, asking for confirmation that they were all still to be paid. He concluded: 'Turning now to your own situation, clearly we will need to sit down and discuss the way forward, in the light of any decisions which you have made in respect of the sale of your house etc. I am away from the office until Tuesday 20 November, when I will contact you at the telephone to arrange a meeting.'
37. It is as well to be clear that at this point, as had been the position for some time, Mrs Wright had a major problem in that she had borrowed more and more money on overdraft on the basis that her business income justified it, and it had turned out that it did not. Her problem was also the Bank's problem because the Bank had to find a way of getting its money back. If Mrs Wright had a claim which was comparable with what she owed, she could set it off against her indebtedness. If the Bank's estimation of its value was correct, it was largely irrelevant but its continuance was an embarrassment to the Bank. I should also record that for some time the Bank had been very aware of Mrs Wright's background, and it is clear that all involved considered that care in the sense of caution was needed when dealing with her.
38. As Mrs Wright alleges that she is the victim of a dishonest plot by the Bank to get her to settle her claim against the Bank, it is as well to quote the Bank's memo of 16 November 2001 written by Mr Chubb in full:

"Following the sad death of Mrs Wright's husband, she has been in contact with Richard Wilton at Woking Branch on quite a number of occasions. It would appear that Mr Wright has died intestate with no assets whatsoever and, therefore, Mrs Wright is seeking guidance from Richard as to various procedures to be conducted etc. Richard is trying to act as an honest broker in this matter – he is seen by Mrs Wright as being not involved in the actions she is taking against the Bank.

It would appear that Mrs Wright is still going ahead with the sale of her house and, therefore, she may need some assistance in this matter going forwards. Richard is well aware of the sensitivities, but has volunteered to meet with Mrs Wright in Carmarthenshire to act as a friendly listener and help her resolve her affairs."

I am satisfied that there was nothing sinister or improper behind this memo. It was a delicate and difficult situation, and Mr Wilton was to assist Mrs Wright if he could, and to see if there was a way forward. Mr Chubb was Mr Wilton's immediate superior. Mr Wilton had reported to him that he was going to see Mrs Wright and Mr Chubb had said it was necessary to see if others involved with Mrs Wright had any objection.
39. Mr Wilton did not have to go to Wales. He met Mrs Wright at her daughter's house in Newhaven, where she was staying. He had telephoned her and arranged the meeting on 28 November. Mrs Wright complained that the meeting was so soon. It seems to me that its timing was consistent with Mrs Wright's letter of 12 November. It was a month after her husband's death. It was not a situation which could be left to drift. I heard evidence from Mrs Wright and her daughter, Mrs Martin, as to the state that she was in at this time. While I accept much of that evidence I do not accept that Mrs Wright was incapable of applying her mind to her affairs at that time. Mr Wilton made a call report following the meeting. Mrs Wright said that much of what he wrote was untrue. Having heard Mr Wilton and Mrs Wright's evidence and having considered the report itself against the background of the case I am wholly satisfied that it is an honest document prepared by Mr Wilton to the best of

his recollection following the meeting. The report is just over a page and the meeting lasted approximately an hour and a half. I find as follows:

- (a) Mrs Wright said that although confused following the death she had now "got it together", was feeling much better and was able to deal with her personal affairs.
 - (b) Mr Wilton asked about the indebtedness to the Bank. Mrs Wright said it was a concern: it was covered by the equity in Tan y Coed but would leave nothing to buy another property.
 - (c) Mrs Wright said she had been advised by her solicitor (by whom she meant her husband, she said in evidence) that her claims were strong. Mr Wilton said he could not discuss the claims. Mr Wilton's report states: 'She advised me that she does not wish to enter litigation against the Bank, as this would incur substantial legal costs, which she would be unable to fund. Following the sad loss of her husband, she is mindful to accept the offer of compensation of circa £4k, which was detailed in an earlier letter from Bernie Goldberg.' I pressed Mr Wilton about that passage. He said that he had referred to Mr Golberg's letter, that Mrs Wright had said she had not seen it – that it might be at Tan y Coed. He did not know how the figure of £4,000 had come up, but it had not come from him and he did not know what the letter as sent had offered: he had not received a copy. He said that Mrs Wright was very distressed and he was not going to push anything. I can see no reason why Mr Wilton should have mentioned £4,000 – for it was never a figure under consideration, and there was good reason for him not to have referred to £4,000 if he did know what Mr Golberg's offer came to: the offer figure was not £4,000 and there was every reason not to lie about it. Mrs Wright stated that Mr Wilton brought up the claim and said he felt she should accept the offer of £4,000 in Mr Golberg's letter - about which she knew nothing. I conclude that the topic of the claim certainly came up. It was a matter of importance to both, particularly Mrs Wright. The letter was referred to. Mrs Wright had not seen it. Mr Wilton did not give Mrs Wright any advice about accepting the offer. Mrs Wright may have said that she might well have to accept it, or something to that effect. I cannot find any explanation for the figure of £4,000. Mr Wilton said she should respond to Mr Golberg's letter, a statement which cannot be criticised. It may seem at first odd that following the meeting Mr Wilton did not arrange for a copy of the letter to be sent to Mrs Wright. That he did not do so suggests that he was unclear whether she had definitely never received it or whether it might be at Tan y Coed.
 - (d) Mrs Wright told Mr Wilton that she had a buyer for Tan y Coed, which would repay the indebtedness. She wanted to be close to her daughter and had identified two properties, but would need 100% finance from the bank to proceed. Mr Wilton said he would consider a new mortgage. He did not undertake that the Bank would provide one.
 - (e) They discussed Mrs Wright's business and outstanding fees, in particular Laity. Mrs Wright said (Mr Wilton wrote 'claimed' – which suggests he was suspicious) she had a considerable amount on work on hand and continued to trade. I should say that I accept that she was not then capable of working properly, but that is not what she chose to tell Mr Wilton.
 - (f) Mrs Wright was to provide copies of her accounts to November 2000 and details of current fee income so the Bank could consider the mortgage.
 - (g) I am satisfied that Mr Wilton did not advise Mrs Wright to sell Tan y Coed and move to Newhaven. He is likely to have agreed with her that this was a sensible plan, but that is a very long way from advising her as a banker that that was what she should do. Mr Wilton recorded in his report that he was very careful not to influence Mrs Wright in her decision as to Tan y Coed. Neither did Mr Wilton advise Mrs Wright to buy the house next door to her daughter.
 - (h) Mr Wilton did not make any representations as to the effect on her overall position if Tan y Coed was sold and Mrs Wright moved to Newhaven. It was apparent that if the equity in Tan y Coed was released that could decrease her indebtedness. He did not make a representation as to the effect on her monthly commitments.
 - (i) Mr Wilton put no pressure on Mrs Wright, and behaved entirely properly.
40. Mr Wilton's report on the meeting concluded: 'While the proposal that we provide 100% finance is not ideal, I do believe that it would be a reasonable outcome for both sides, and would enable us to move on.' On 29 November Mr Wilton faxed a copy of his report to Mr Golberg saying 'keep your fingers crossed'. I do not think that there was anything sinister in this: he might equally have said 'So far, so good'. He also stated in a memo to Mr Goldberg: 'You will enjoy reading the attached call report following my visit to Mrs Wright. If we can settle for £4K it will be a real win in terms of management time but I still find it difficult to justify.' Again there was nothing sinister in this. It looked as if there was a way forward on the lending. It looked as if Mrs Wright might agree to settle her claim. That was good news for the Bank.
41. When Mr Golberg saw Mr Wilton's call report on his meeting with Mrs Wright he wrote in a memo dated 3 December that: 'We must avoid any situation where Mrs Wright is able, at some later stage, to claim that she signed up to a settlement when she was too grief-struck to understand what she would be losing.' He asked for advice from an in-house solicitor as to steps the Bank might take to address that risk by, for example, ensuring she took legal advice. There is no record of any advice Mr Goldberg received, but it is likely he was advised that Mrs Wright should be advised to take independent legal advice. I asked Mr Goldberg about the reference in the memo to £4,000. He had no recollection of it, but stated he might not have noticed it or might not have checked the file to see if it was correct.
42. On 12 December 2001 Mrs Wright wrote to Mr Wilton saying that she was back in Wales and able to provide him with her latest accounts and details of monies due in. The accounts showed a profit for the year to 31 October 2000 of £62,892. Invoiced sales were shown as £21,382. She listed four items of new business. The fees expected on the first two were put at £52,000. Mrs Wright told me that she had no prospect of earning at this time. If that was so, she was trying hard to give the Bank a different impression. The letter reads as a very competent letter written by someone who knows what they want by way of mortgage. Thus, for example 'I would prefer a fixed rate on a capital and interest basis over a period of 15 years.' It was suggested to me that this was a letter put together by Mrs Simmonds who had had difficulty in gathering from Mrs Wright what should be said. I reject that: the very strong probability is that this was Mrs Wright's letter. I am not suggesting that she was not distraught and emotionally in a poor state during this period. I am saying that she was making her own decisions in her dealing with the Bank. The letter ended that her new business name 'Patricia M. Wright' was as shown on the letterhead. She asked for a £10,000 facility on her business account. On the same day, 12 December, her solicitors sent Mrs Wright a contract for the purchase of 5 Marine View, Newhaven, the house next to her daughters, and in which she still lives. The price was £135,000. On 17 December Mr Wilton wrote to Mrs Wright saying that the bank was prepared to lend £150,000 with

an overdraft facility of £10,000. On 29 December Mrs Wright wrote asking if she could utilise her £182,000 life policy for Marine View.

43. On 3 January 2003 Mr Wilton wrote a memo to Mr Goldberg asking if he had received a letter from Mrs Wright accepting the offer of compensation. He said: 'If not, I will remind her that the restructuring of the facilities is conditional upon all outstanding matters having been satisfactorily resolved.' That is what Mr Wilton then said, but I do not think it was the case. The Bank had not made its offer of facilities conditional upon the acceptance of the terms offered by letter of 5 October 2001, and it would in real terms have been too late to withdraw the offer. Mr Goldberg was very aware of the care needed in dealing with Mrs Wright. Although the possibility was not considered during the trial, I think on reviewing the matter Mr Goldberg may well have responded that Mr Wilton should not approach Mrs Wright in those terms. Mr Wilton's next memo to Mr Goldberg is dated 9 January. He said that he had spoken to Mrs Wright who had told him the sale of Tan y Coed was hopefully proceeding to contract that Friday with completion before the end of the month. The memo then reads: 'I am aware from my telephone conversation that she has yet to respond to your letter offering compensation. It is essential that the outstanding complaints are satisfactorily dealt with before we move forward.' The memo then reads: 'Mrs Wright is residing with her daughter in Newhaven having left your letter in West Wales! I have agreed that we will fax her a copy of your letter so that she may formally respond.' Mr Wilton also made a call report in relation to his telephone call to Mrs Wright. The relevant part reads: 'I also discussed with Mrs Wright whether or not she had responded to the letter from Bernie Goldberg regarding her various complaints. She confirmed that she has not yet done so, because the original letter is at the Welsh property. She has undertaken that she will immediately respond, accepting the offer of compensation.' Mr Wilton was adamant in his evidence that he had not said to Mrs Wright that the offer of facilities would be withdrawn if she did not accept the offer. After some thought I have concluded that I should accept that.
44. On 10 January 2002 Mr Wilton gave approval for the mortgage for Marine View. Here I do not accept his evidence, namely that there was no connection between this and what Mrs Wright had said the day before about settlement. His call report of 9 January asking Mr Trievnor to 'please now' liaise with him regarding the finalisation of the mortgage advance makes it clear that there was.
45. On 15 January 2002 an attempt was made to fax Mrs Wright a copy of the 5 October letter, which failed. It was faxed successfully on 21 January. Mrs Wright replied on 7 February. She wrote:
- "Further to your correspondence of 5th October 2001 as you are aware, my husband subsequently died on 27th October 2001.*
- Due to considerable changes in my personal circumstances, I am reluctantly agreeable to accepting the bank's proposals for settlement as outlined in your aforementioned correspondence, subject to the bank providing me with a mortgage of £132,000 on 5 Marine View, Newhaven, a long term low interest loan of £18,000 an overdraft facility of £10,000 on my business account and the continuance of the existing overdraft facility on the former joint personal account, which is now in my sole name and for which I have accepted sole liability.*
- As regards the refund of excess pension contributions it may take some little time for my accountant to provide you with the information requested, as it is my intention to change accountants due to my move. Completion takes place on Tan y Coed on February 15th 2002 so as you can probably imagine I am in the throes of removal. Once my new accountants have the information to hand I will instruct them to forward it to you."*
- I am satisfied that when Mrs Wright wrote as she did she had read and understood the letter of 5 October. She knew that she was not going to receive £4,000.
46. On 11 February Mr Wilton wrote to Mrs Wright thanking her for her letter to Mr Goldberg of 7 February. He wrote:
- "I confirm, in accordance with our original discussions that the bank will be providing you with the following facilities :-*
- Mrs P M Wright Private Account Limit £ 10,000*
Patricia M Wright & Associates Limit £ 10,000
Business Development Loan Limit £ 18,000
House mortgage loan Limit £132,000
£170,000
- I am pleased to enclose the relevant facility letter documentation in respect of the various facilities. You have separately received the documentation in respect of the new mortgage facility."*
47. It is very probable that Mr Wilton wrote as he did setting out the facilities offered because the Bank had received Mrs Wright's letter of 7 February, but he was not asked about that. He did not want to set out those facilities until the Bank had an acceptance of the offer. Mr Wilton was questioned by Mrs Wright why the Bank lent her so much. He said that it was the commercial reality: she owed more than she or the bank wished. There were two options, either to foreclose or to find a way forward. He said he felt that the new lending was the right way forward for the Bank, but that he was sure that he would have been supported if he had decided on foreclosure. I should again make clear my finding that in none of this was Mr Wilton advising Mrs Wright. She had asked for the Bank's assistance at their meeting on 28 November 2001, as I have set out. The Bank was free to make such proposals as it wished, or to make none, and Mrs Wright was free to accept them or not as she wished.
48. On 18 February 2002 Mr Golberg spoke to Mrs Wright by telephone His note records: 'I indicated to Mrs Wright that I was anxious to ensure that her acceptance was one she would be happy to live with and suggested that perhaps she wished to take legal advice. She replied that she had taken legal advice – her late husband was a solicitor who indicated she had a better claim – however at this stage her specific desire was to close books on this unfortunate set of events.' I accept that as an accurate record. Mr Golberg said in answer to questions from me that he was anxious not to put any pressure on Mrs Wright either to reject or to accept the offer. That was why he had not made any contact: the right thing for him to do was to back off. He said if she had wanted to take legal advice, he would have kept the offer open, making any recalculation of interest necessary. He said that to his mind the offer letter stood on its own, meaning that it was not part of an overall package.
49. On 17 July 2002 Mrs Wright wrote to Mr Wilton following a telephone discussion the day before, which had clearly been about the state of her accounts. She asked that the mortgage on Marine View be changed from a repayment basis to an interest only basis, presumably to lower her outgoings. She explained the difficulty which she had had being ill for a long time

after her husband's death: she had effectively to start the business again from scratch. She attached a list of current debtors and work in progress. On 17 July her personal account was £9,999 overdrawn against a limit of £10,000, her Meridian account was £4,178 overdrawn against a limit of £4,700, her business account was £10,025 overdrawn against a limit of £10,000. A call report dated 23 July shows that Mrs Wright had a fresh problem. The Inland Revenue were pursuing her for £6,952, which it was said had arisen through the fault of her previous accountants who were about to be struck off. An increase of £7,000 in her business loan facility was agreed from £18,000 to £25,000.

50. On 1 November 2002 the Bank wrote to Mrs Wright to say that she was overdrawn on her business account by £13,568 against a limit of £10,000 and on her personal account by £11,876 against a limit of £10,000. On 18 November the Bank wrote to say that they would not honour further presentations in the absence of covering funds or a solicitor's undertaking as to the sale proceeds of her house or her daughter's house. Mrs Wright wrote on 5 December saying that she had been very unwell and was suffering from anxiety and depression. She said that it had been agreed with Mr Wilton after her husband's death that the life insurance premiums would be paid regardless of her financial position. She said that the Bank still owed her money under the settlement. She said that if the life premiums were not met, she would consider the settlement agreement void and reconsider her claim against the Bank. Her direct debit to BT had been returned. She threatened to go to the press. She said her daughter had sold her house and would shortly be in receipt of funds, and she herself had monies due in shortly. She said the only person who had shown her understanding and sympathy was Mr Wilton. The Bank replied on 11 December saying that the life premiums would be paid and that if Mrs Wright's daughter's solicitor could give an undertaking the Bank might be able to provide further short term assistance. No undertaking was forthcoming. On 4 February 2003 the Bank wrote to Mrs Wright saying that it had not been able to pay items on her personal and business accounts since the previous November, and asking that she contact the Bank urgently to advise her present situation. It does not appear that she did so.
51. Although I have not seen any letter, it appears from paragraph 80 of the amended particulars of claim that in July 2003 the Bank gave notice that, unless payment was received within 7 days, it would foreclose on the mortgage. On 15 July 2003 an organisation called Bank Mediation Services wrote to Sir John Bond, the Bank's chairman, on Mrs Wright's instructions. The letter asserted that the strain that the meeting of 27 September 2001 put on Mr Wright resulted in his stroke, that at the meeting on 28 November 2001 Mr Wilton had suggested a way for Mrs Wright to sell Tan y Coed and to buy 5 Marine View, that Mrs Wright was not then in a fit state to make decisions, that she was never advised to seek independent advice, that the Bank provided her with facilities totalling £170,000 when she was on £19 per week widow's benefit, and that in April 2002 and again in January 2003 Mrs Wright took overdoses of tablets and required hospital treatment. It was said that it was a case with many issues, but if the bank did not resolve them, 'then the dispute will turn into a court case with substantial media interest'. A meeting was requested at which a solution could be found by returning Mrs Wright to the position she would have been in if the problems had not occurred. The letter was acknowledged by the Bank and it was twice said that the Bank was making enquiries. It appears, however, that no substantive response was made. There is a similarity between these events and those leading to the meeting on 26 February 2001 in that in each case pressure from the Bank for repayment led to claims being advanced against the Bank.
52. Mrs Wright sent a letter before action to the Bank dated 12 January 2004. She stated that her claim for damages would be in excess of £250,000 and interest. The claim form in this action was issued by Mrs Wright on 24 June 2004.
53. As at 21 March 2006 Mrs Wright owed the Bank £237,670 subject to her claims. This was made up by:

Current account £ 8,113
Business account 24,152
Business loan account 30,909
2nd current account 17,793
Mortgage account 144,268
Mortgage account 12,413

She has a credit of £183 in a savings account, and her pension fund stands at £7,257. She is still the owner of 5 Marine View, which she purchased in 2002 for £135,000.

The claims

54. The most important claim made by Mrs Wright is that the settlement agreement reached by Mr Golberg's letter of 5 October 200, her letter of 7 February 2002 and the Bank's subsequent conduct in providing the facilities asked for in her letter is not binding on her. If it is not, then she is free to proceed with her claims arising from the earlier events. She accepted that with one exception her earlier claims are otherwise barred by the settlement. The exception is her claim made on behalf of her husband's estate that the Bank failed properly to advise him in connection with the cancellation of the joint life policy in 1999. Mr Simon Clegg who appeared on behalf of the Bank accepted that this claim was not covered by the agreement. Mrs Wright asserted that she is entitled to have the charge over 5 Marine View set aside. She did not assert that this would affect her indebtedness to the Bank. In addition to her claims arising prior to the settlement agreement she made claims arising from the Bank's conduct leading to the transactions she entered into in early 2002. She asserted that those claims could be set off to extinguish her indebtedness to the Bank. She was not in a position to call evidence as of the current values of the relevant properties. She in effect asked me to award her damages to be assessed and to order a subsequent assessment.
55. I will take Mrs Wright's claim that the settlement agreement is not binding on her first. She relied upon misrepresentation, undue influence, economic duress, breach of a fiduciary relationship, illegality, and, in her closing submissions, on repudiation. I will take these in turn.
56. The misrepresentations which Mrs Wright relied on were alleged to have been made by Mr Wilton at the meeting on 28 November 2001. As extracted from paragraph 5.1.4(ii) and (iii) of the reply they were:
(a) that by selling Tan y Coed her monthly commitments would be reduced;
(b) that by selling Tan y Coed she could clear all her debts and start again;
(c) that the settlement was for £4,000.
57. I am not satisfied that any actionable representations were made in the terms of the first two. I accept that Mrs Wright and Mr Wilton discussed her moving to Newhaven. He did not advise her that she should do that. As I have stated, he is likely to have agreed with her that it was a sensible plan, as indeed it would have seemed – moving to a smaller and cheaper house next to her daughter from a remote house far away. He may have remarked that the proceeds of Tan y Coed would clear her

indebtedness. That was approximately true. The total debt as recorded on Mr Wilton's call report of 28 November 2001 was £200,073 and Tan y Coed was being sold for £200,000. The net proceeds of sale would have been less but as part of £200,000 the shortfall would have been small. Mrs Wright recognised that shortfall in her letter of 13 February 2002. Mrs Wright said that, if she had known there would be a shortfall, she would never have moved. I do not accept that. I am satisfied that her decision to move was made independently of anything said by Mr Wilton save that he said that the Bank would look favourably at the lending necessary to enable the move - or words to like effect.

58. I do not think that Mr Wilton made a representation that, come what may, Mrs Wright would reduce her monthly outgoings by the move. As she would be reducing her borrowing by the amount of the equity in Tan y Coed, it would have been reasonable to expect that her monthly payments to the Bank would be less. Mr Wilson may well have remarked in the course of conversation that she would reduce her outgoings to the Bank. It is the sort of remark that might easily be made in a conversation such as was taking place. How far it would be right would depend on what new borrowing requirements Mrs Wright had and how her borrowing was structured. That was in the future. Any such remark by Mr Wilton was not one that she was entitled to rely on. I find that she did not in fact do so.
59. As for the £4,000, however it came up in the meeting and whatever was said about it, Mrs Wright had the letter in January 2002 and read it and knew what was being offered. She never complained that there was no £4,000.
60. As Mrs Wright alleged that Mr Wilton had lied to her at the meeting as part of a plot or scheme to get her to give up her claims against the Bank, I should specifically state that I find he was throughout honest, and that there was no plot. In her letter of 5 December 2002 Mrs Wright wrote favourably about Mr Wilton, saying he was the only person who had shown her understanding and sympathy. She then knew how things had turned out and so, if he had lied to her, she knew it then.
61. On the facts as I find them to be the allegations of undue influence and economic duress have no foundation. I accept that Mrs Wright was in a vulnerable position after her husband's death. She was also in a difficult and vulnerable position because she owed the Bank money which she could not pay without giving up her home. The Bank was entitled to demand that money. While they might have been criticised for acting without proper sensitivity if they had done so, they would have been within their legal rights. Instead, in Mr Wilton's words, the Bank looked for a way forward. The Bank did not put any pressure on Mrs Wright to settle the Bank's claim. She was not told that she must settle with the Bank if they were to continue lending. But in my view they would have been entitled to take that position. Quite apart from her claiming against the Bank, Mrs Wright had been a very unsatisfactory borrower always needing to borrow more with the funds to repay the Bank just around the corner but seldom materialising. The Bank would have been within its rights to say that, if Mrs Wright wanted the Bank's continued support, she must give up her claims. If she had agreed to do so in the face of that, the law would not have intervened. There would have been no abuse of influence: there would have been no illegitimate pressure to found a case of economic duress. But under the sensitive hand of Mr Goldberg the Bank did not go so far as to make it a condition of continued lending that Mrs Wright gave up her claims. The facts here are a long way from founding undue influence or duress.
62. Nor was there any breach of a fiduciary relationship. The facts are a long way from those in *Lloyds Bank v Bundy* [1975] 1 Q.B. 326, on which Mrs Wright relied. There the Bank sought to rely on a guarantee given to a bank by a father to support his son's existing borrowing. It was inappropriate for the father to give the guarantee as the bank manager - on whom the father relied, knew.
63. I am satisfied that on 18 February 2002 Mr Goldberg did suggest to Mrs Wright that she might take legal advice, and that if she had wished to do so he would not have held her to the settlement.
64. Mrs Wright submitted that, if it had not been for what Mr Wilton said, she would have remained at Tan y Coed. As I have stated, I do not accept that. Mrs Wright decided what she was going to do herself, no doubt in conjunction with her daughter. The Bank's contribution to her decision was that it said it would look favourably at the necessary lending, no more.
65. Mrs Wright relied in her opening submissions on section 5 of the Financial Services Act 1986 and section 27 of the Financial Services and Markets Act 2000. The latter is probably the relevant section as it came into force on 1 December 2001 and although the meeting between Mrs Wright and Mr Wilton was on 28 November 2001 the settlement agreement was made in 2002. I am satisfied that section 5 could not apply because Mr Wilton did not enter any agreement, and that section 27 does not apply because Mr Wilton was not carrying on a regulated activity. In any event nothing that Mr Wilton dealt with on 28 November 2001 concerned a regulated activity, and he gave no advice. Mrs Wright suggested that on 9 January 2002 Mr Wilton in effect gave advice that the pension term policy should have been divided into two policies, which was the first matter dealt with in the offer letter of 5 October 2001. I do not think that he gave any such advice.
66. Mrs Wright submitted that the Bank failed in breach of an FSA rule to advise her of her right to refer her complaint to the Financial Services Ombudsman. The letter of 5 October 2001 referred to the PIA Ombudsman. I cannot see that this gives rise to any claim.
67. Mrs Wright submitted that in any event the Bank had not performed its side of the settlement agreement and so it could not rely on it. She said that the pension term insurance was continued until August 2004 and one of the sums due under the agreement was not paid. This suggestion amounting to repudiation was not pleaded and was not investigated in evidence. Mrs Wright does not seem to have raised either of the matters relied on with the Bank in 2002 or 2003. I should reject the submission.
68. I will take next the 1999 claim which is outside the settlement agreement. It is said that Mr Halksworth should have advised Mr and Mrs Wright as to the consequences of cancelling the joint life policy, namely that Mr Wright's life would be uninsured and, given his health, it might be difficult to get further life insurance for him. Mr and Mrs Wright's first object at this time was to relieve themselves of the expense of the joint policy, made expensive by Mr Wright's ill-health. Mr Wright had not originally wanted to be a party to the Tan y Coed mortgage but the Bank had required that he should be because Mrs Wright could not show enough income at that time to support the mortgage by herself. They both knew quite well what the consequences of cancellation would be. No advice was needed.
69. I come then to the settled claims. The most important is the alleged mis-selling of the pension. Mrs Wright alleges that Mr Halksworth in effect made it a condition to the rest of the package that Mrs Wright took out a pension. Mr Halksworth did not give evidence. While I have read what he responded when the bank was investigating the claim, I should give little weight to it. I have to decide what happened on the balance of probabilities. I do not think that Mr Halksworth said anything to the

effect that, unless Mrs Wright took out a pension, they would not get the rest of package. Mrs Wright said he told her: 'Come on Pat, the bank has got to get something out of this.' I think something on those lines is likely to have been said, but it was not said in the sense argued for but as part of sales talk to get Mrs Wright to agree to the pension. I find that Mr and Mrs Wright went to the meeting not desiring that Mrs Wright should take out a pension but were persuaded by Mr Halksworth to do so. Mr Halksworth was in plain English a salesman of financial products and would have received a commission as a result of his success. Was he justified in acting as he did? I do not think that he was. Mr and Mrs Wright were seeking to re-arrange their affairs because their received income was exceeded by their outgoings, and they were seeking to cut down on their outgoings. It was thought the difficulty would be temporary as Mrs Wright's business was doing well. Given their current shortage of cash in the bank it was foolish to commence a pension at least until the flat was purchased and let and the rent was coming in. Then the position could be reviewed. Mr Halksworth should not have advised and pressed Mrs Wright on 5 February 1999 to take out a pension, still less one which was to start as soon as possible. This was a breach of his duty owed to Mrs Wright at common law. It likewise gave rise to a cause of action under section 62 of the Financial Services Act 1986 for failing to act in his client's best interest (Lautro Rules L8.1, Imro Rules I.3.1).

70. I do not consider that Mrs Wright thought that she could not reduce the premiums or cancel the pension. On Mr Halksworth's advice she initially thought the pension a good idea. Contrary to her evidence to me she did not think that she was bound to keep paying because the pension was somehow a term of her continuing facilities with the Bank. She was rightly concerned when she saw the premiums going out before the flat was bought and let. I think she had not previously thought about that. On 16 December 1999 she wrote the letter which I have quoted. That is quite inconsistent with the idea that the Bank was obliging her to have the pension. She told me that she was putting a shot across the Bank's bows (to see the response). I have no hesitation in rejecting that.
71. Mrs Wright's case is that Mr Spennewyn put improper pressure on her to sell the flat, and that the indebtedness which led to him doing that was due to the pension premiums. Mrs Wright did not say that she told Mr Spennewyn that it was all the Bank's fault because it had insisted on the pension. I have no doubt that, if she had, he would have told her to stop paying the premiums. Mr Spennewyn was a new manager. I can safely deduce that he looked at the lending and did not like what he saw. He was anxious to control it and the sale of the flat was a potential source of funds and a means of reducing outgoings by removing the loan related to its purchase. He was quite entitled to press Mrs Wright to sell it and to get her accounts in order.
72. The first pension premium of £477.75 including contribution protection was paid on 30 March 1999. This was not the cause of Mr Spennewyn's problem. The PGA account limit had grown on the promise of expanding business and outstanding fees from £10,000 in September 1998, to £15,000 in October 1998, to £25,000 in December 1998, to £30,000 at some point in 1999 (see memo of 13.1.00), all on a temporary basis. The pension premiums were but a small part of the problem. If they had been the problem, it could readily have been resolved. It is, I regret, a nonsense to say that if Mrs Wright had not taken out the pension, the flat would not have had to be sold. The loss that Mrs Wright has actually suffered is that the pension has been purchased with borrowed money on which she has paid interest. That interest has to be offset against the increase in her pension fund over what she paid in premiums. That, in my view, is the measure of her loss.
73. The amended particulars of claim appear in paragraph 3 on page 19 to allege fraud against Mr Halksworth. I would reject that allegation. There were errors in his 'fact find' but nothing to suggest that he was fraudulent.
74. During the course of the trial Mrs Wright raised a claim, which I do not think was pleaded, that the original life insurance policy sold to Mr and Mrs Wright was unsuitable because it was a condition of the policy that Mr Wright should not be over 70 during its term. I have not been able to study the terms of the policy as issued. However, it seems to me that, if a company issues a life policy with such a provision in its small print but which provides that cover is to be for a term of years which will take the beneficiary past his 70th birthday, then, the disclosed date of birth being crucial to any life cover, the insurer is to be taken to have waived any such condition.
75. I am aware that I have not dealt with all Mrs Wright's submissions relating to alleged regulatory misconduct. I do, however, consider that I have dealt with those matters which are necessary in order to deal with her substantive claims.

Conclusion

76. I find that Mrs Wright's claims arising from events between October 2001 and February 2002 including in particular her claim to rescind the settlement agreement fail. I find that her claim made on behalf of her husband's estate in connection with the surrender of the joint life policy in 1999 also fails. Her further claims arising from 1999 are, as Mrs Wright accepts, barred by the settlement agreement.

Patricia Mary Wright appeared in person.

Mr Simon Clegg (instructed by DG Solicitors, Birmingham) for the Defendant