

## **complaint**

Mr R complains on behalf of P, a limited company, about a 'key facts' document produced by Strathearn Insurance Services Limited (SISL) in relation to a property deposit bond.

In summary, Mr R says that SISL failed to disclose material information and provide appropriate risk warnings in the 'key fact's document. He says that he decided to invest in three property investment schemes ('Scheme A, Scheme B and Scheme C') based solely upon the respective 'key facts' documents. The schemes all failed, and P lost its investment. Mr R says that had the full facts and risk disclosures been made in the 'key facts' documents, he would not have taken the decision to invest in the schemes and suffered financial loss.

This decision concerns P's investment into Scheme C.

## **background**

I issued a provisional decision in January 2019 upholding the complaint. A copy is attached and forms part of this decision.

Mr R, through his representative, responded to accept my provisional decision. He also clarified the amount P had received from Scheme C.

SISL didn't accept the provisional decision. Its representative said, in summary:

- On the matter of jurisdiction, SISL recognises that this has been considered by this service in the jurisdiction decision in a similar case. Notwithstanding this, it does not accept that P falls within the ordinary meaning of a client. There was no retainer of SISL by the consumer and no remuneration was paid by the consumer to SISL. It also didn't have evidence that P was a micro-enterprise, and therefore wasn't satisfied that it was an eligible complainant.
- The context of the investment needs to be taken into account. The members of the IPIN network tend to be high net worth / sophisticated investors who are familiar with 'property club' type investments. SISL understood that the IPIN members had self-certified to IPIN that they were aware of the risks of making investments of this nature and they invested via IPIN because they sought a high rate of return, something which is inevitably associated with increased level of risk.
- The investors typically received advice from other parties including their lawyers, IPIN and potentially, independent financial advisers and that is something that needed to be taken into account.
- The provisional decision appears to regard the 'key facts' document as if it had either been a 'policy summary' or 'key features document' as defined the FCA Handbook. It is actually 'initial disclosure document' (IDD) and should be treated as such. It is unfair to judge the IDD against the standard of another type of document which it never purported to be.
- It cannot be said that P relied on the 'key facts' document as it appears quite possible that if the same bond had been in place and it was told of the bond but the 'key facts' document had not been present, it would still have gone ahead with the scheme.

- Each investor was required to sign their acceptance of the surety bond and the provider's name and address were displayed on the document the investor signed.

### **my findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I see no reason to depart from the conclusions I reached in my provisional decision. I remain of the view that the settlement set out in my provisional decision represents fair compensation.

It seems to me that a lot of points raised by SISL were already considered by me in the provisional decision. So I don't think there is much more to add to what I have already said. However, for completeness, I have gone through again here what in my view are the key points raised by SISL's representative in response to my provisional decision.

### ***can we consider the complaint?***

As I explained in my provisional decision, SISL had objected to this service considering this complaint, and a number of others similar to it. It said P wasn't its customer, the deposit protection insurance wasn't a regulated product and that it did not carry out any regulated activity.

This was considered at length by us in another similar case and SISL recognises that the jurisdiction issues that are relevant to this case have been considered in the jurisdiction decision in that case. So I do not want to repeat those findings here. I remain of the view that this complaint is within our jurisdiction for the reasons I mentioned in my provisional decision. I will however address the point raised by SISL following my provisional decision in this regard.

SISL says that P does not fall within the ordinary meaning of a client, there was no retainer of SISL by the consumer and no remuneration was paid by it to SISL.

Our powers to consider complaints are set out in the Financial Services and Markets Act 2000 (FSMA) and in rules, known as the Dispute Resolution Rules (DISP) written by the Financial Conduct Authority (FCA) in accordance with the powers it derives from FSMA. These form part of the FCA Handbook

DISP2.7.1R states:

*"A complaint may only be dealt with under the Financial Ombudsman Service if it is brought by or on behalf of an eligible complainant."*

An 'eligible complainant' is defined by DISP 2.7.3R as including a 'consumer', which means "*any natural person acting for purposes outside his trade, business or profession*".

DISP 2.7.6R further states:

*"To be an eligible complainant a person must also have a complaint which arises from matters relevant to one or more of the following relationships with the respondent:*

- (1) *the complainant is (or was) a customer.. of the respondent*
- (2) *the complainant is (or was) a potential customer... of the respondent*

.....

*(5) the complainant is a person for whose benefit a contract of insurance was taken out or was intended to be taken out with or through the respondent "*

P was a beneficiary under a contract of insurance. And for the reasons already explained, I am satisfied that the contract of insurance was taken through SISL. So I consider that P is an eligible complainant under DISP 2.7.6(5)R.

It may be that no remuneration was paid directly by P but often insurance brokers are paid commission by the insurer and that is what had happened here. SISL was paid commission by the insurer NWIC. As stated in the 'key facts' document the commission was about 11% of the premium, paid by the developer to NWIC. As I understand it, the premium in turn was 2.25% of the deposit paid by P. Of this, 2% was retained by NWIC and 0.25% was paid as commission to SISL.

In addition, I also consider that P is an eligible complainant under DISP 2.7.6(2)R. It may be that there was no 'retainer' of SISL by P but I am satisfied that it was a potential customer of SISL and therefore eligible complainants under the DISP rules.

SISL in its capacity as a regulated insurance intermediary offered its services to potential customers. It said in the 'key facts' document: "*Due to the regulated nature of the product offered, any direct questions relating specifically to the bond aspect of the SES offering should be directed to Strathearn Insurance using the contact details below..*"

It further said: "... *The FSA requires you to be provided with this information. Use this information to decide if our services are right for you.*"

It also referred to our service in the event of any complaint and to the FSCS in the event SISL could not meet its obligations. Thus I am satisfied that SISL envisaged the recipients of the 'key facts' document of the specific schemes as its potential customers.

It may be that P did not eventually approach SISL but SISL made its services available to it in its capacity as the regulated firm. And as noted earlier, SISL was paid commission in relation to the deposits made, whether or not the respective investors contacted it.

Taking all of this into account, it is my view that P was a potential customers of SISL and therefore eligible complainant under DISP 2.7.6(2)R as well.

SISL has also raised concerns as it hasn't been provided with any evidence to show that P was a micro-enterprise at the time it raised its concerns with SISL. In particular it referred to DISP 2.7.3(R):

*"an enterprise which:*

- (a) employs fewer than 10 persons; and*
- (b) has a turnover or annual balance sheet that does not exceed €2 million."*

Our service has sent SISL the relevant information to confirm that P meets the criteria to be considered a micro-enterprise and asked it for any further comments.

SISL hasn't responded to this information. I am satisfied that P meets the criteria required under DISP 2.7.3(R) to be considered a micro-enterprise and therefore this complaint falls under the jurisdiction of our service.

### ***relevant considerations***

I am required to determine this complaint on the basis of what I consider to be fair and reasonable in all the circumstances.

When considering what is fair and reasonable, I am required to take into account relevant law and regulations; regulator's rules, guidance and standards, and codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

The FCA handbook sets out the Principles which are a general statement of the fundamental obligations of the firms it regulates, such as SISL.

Principle 7 says:

*"A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear fair and not misleading"*

Client is defined as a customer and it includes potential client (and so potential customer).

P was a potential customer, and its complaint is essentially about what SISL communicated (or failed to communicate) to it through the 'key facts' document. So I consider that Principle 7 is relevant here.

I also consider that Principle 6 is relevant in this instance, which says: *"A firm must pay due regard to the interests of its customers and treat them fairly."*

IPIN provided P with a promotional literature about the scheme. It was called the Investment Analysis Document (IAD). The IAD stated that the bond would protect the full amount of the deposit in the event of a contractual default by the developer. Investors were referred to a Key Facts document produced by SISL, which was included in the IAD.

The IAD said:

*"The property deposit is provided by the developer in association with Strathearn Insurance Services Ltd (see page 22)".*

Page 21 was entitled 'Professional Service Providers' and included the following:

***PROPERTY DEPOSIT BOND***

*Strathearn Insurance*

*The SES application for [Scheme C] uses a Property Deposit Bond to protect 100% of the deposit funds invested by SES investors in the event that the developer defaults upon his obligations within the applicable purchase agreements.*

*The Property Deposit Bond is arranged on behalf of the developer by Strathearn Insurance Services Limited. Due to the regulated nature of the product offered any direct questions*

*relating specifically to the bond aspect of the SES offering should be directed to Strathearn Insurance.*

*Please see Key Facts document issued by Strathearn Insurance overleaf.”*  
Page 22 is where SISL's 'key facts' document can be found.

So when SISL produced and provided the 'key facts' document for the IAD, it knew that the consumers were being referred to the 'key facts' for information about the bond. So SISL had an obligation to ensure that the information it provided about the bond was clear, fair, and not misleading.

***was the information provided clear, fair, and not misleading?***

For the reasons explained in my provisional decision, I remain of the view that that SISL did not provide clear, fair and not misleading information about the insurance in its 'key facts' document provided to P.

SISL says that what it provided was an Initial Disclosure Document. However I note that this document was referred to as a key facts document by SISL itself on more than one occasion. The IAD also refers to it as a key facts document and not as an Initial Disclosure Document.

In any event, as I explained in the provisional decision, this 'key facts' document was clearly intended as the source of information about the bond for potential customers thinking about investing in the schemes and SISL was aware of it. So I consider that SISL had an obligation to ensure that this communication was clear, fair and not misleading.

***did P rely on the 'key facts' document?***

Having concluded that the 'key facts' document was not clear or fair, and was misleading, I need to consider how much reliance P placed on this document before it decided to make the relevant investment.

For the reasons explained my provisional decision I think it is reasonable to conclude that P looked at what SISL stated in the 'key facts' document about the bond, and relied on it when it decided to proceed with the scheme.

SISL says that members of the IPIN network were frequently high net worth / sophisticated investors who were familiar with 'property club' type investments. It says that they were aware of the risks they were taking and had sufficient advice to make informed decision.

On the other hand, Mr R says that he is not a sophisticated investor. At the time of the investment he was an estate agent for properties both in the UK and overseas and had been for a number of years. He has said he was looking for a safe investment with a fairly high return. Because of this, the security offered by the insurance was crucial in his decision making. He decided to place the money from his savings that he had intended to use to purchase another property deposit, into investments with IPIN, because his understanding was that the funds would be protected from loss, but also had the opportunity for high growth rates.

In my view the issue here is not so much about consumers' net worth or their knowledge of the investment (i.e., the property scheme opportunities) but about the insurance that was

intended to offer protection should something go wrong with the investment. To that extent, I accept that Mr R was not expert enough to understand the intricacies of the insurance product - for example the solvency of the insurer or whether they would be eligible for FSCS protection should something happen to the insurer. This is more so as the insurer was based overseas. So I do not consider it unreasonable when he says that he relied on SISL's information in relation to the bond.

SISL has also said that investors typically received advice from other parties including their lawyers, IPIN and potentially other independent financial advisers, and that is something that hasn't been taken into account.

I have considered what SISL has said and I am not persuaded by it. As previously mentioned, in the marketing literature IPIN clearly directed the potential investors towards SISL for information about the bond and not to other professionals. As I understand it, IPIN was concerned that it or other related companies should not provide information or advice in relation to the insurance as they were not authorised by the FCA in that regard. This was why SISL was brought in to handle that part of the scheme.

Also, as noted earlier, the 'key facts' document / IAD recommended that consumers seek independent advice on the investment proposals and contract. However for information about the bond they were directed to seek information from SISL.

Given all this, it seems to me that the clear intention was that SISL was responsible for providing information about the bond. So I am doubtful whether the potential investors would have been directed to other professional people for information or advice about the bond.

Nevertheless, even if it is the case that P considers that another professional also failed it in their obligations, then it is up to it to decide whether to take action against either or both. In my view, even if another professional was involved concerning the bond, that does not absolve SISL of the obligations it owed to its customers or potential customers. P considers that SISL failed in its obligations to it and it is entitled to bring that complaint of it about SISL to us, which it has done.

SISL has also pointed us to the bond schedule that was signed by the investors. It says that the schedule provided the name and address of the insurance company and so P ought to have known that the insurer was an overseas insurer.

Firstly, I'm mindful that SISL's 'key facts' document was produced as part of the pre-sale literature, whereas the Schedule was only handed over after the investment had been arranged and monies paid over. And in any event, the document also did not highlight the risks involved adequately - for example, they did not highlight the lack of FSCS protection.

SISL has also argued that P would still have invested even if the 'key facts' document had not been provided, simply in the knowledge that a deposit bond was in place.

IPIN directed the potential investors to SISL's 'key facts' document for information about NWIC and the insurance protection it provided.

In the 'key facts' document SISL clearly gave the impression that it was the expert and it told the consumers that they 'accept' the policy as it was "*designed to work specifically with the investment proposal developed for IPIN SES investors*".

As it happened the insurer failed. Had the 'key facts' document provided the appropriate warnings about the insurer then I do not think that P would have gone ahead with the scheme.

In other words, that the bond was in place isn't just the reason why P invested in the scheme. It invested in the scheme with the belief that the bond would satisfy its needs (i.e., protection of their capital) and I consider that SISL's 'key facts' document which provided information about the bond played a key role in leading P to believe so.

The bond cannot be considered in a vacuum. It seems to me that to understand whether or not P most likely relied on the 'key facts' document, it is necessary to first understand the features of the overall scheme. Then consider the role played by the deposit bond within that scheme. And then go on to consider what information was provided in relation to that product and whether the consumer relied on that information.

Thus whilst I have considered the bond within the wider context of the investment - to be clear - the key question I have considered is what the consumer has complained about - which is about the 'key facts' document provided by the SISL.

### **summary**

In summary I find that:

- When P decided to invest in the property scheme it was looking for a low risk investment with potential for good growth.
- The underlying investments in properties offered potential for growth but they carried higher risk of capital loss. That would most likely have not suited P's risk appetite. However the security of capital was provided through the bond.
- Given P's risk appetite, I am satisfied that it would have wanted to consider the information provided in relation to that bond before deciding to invest in the scheme. It was directed to look into SISL's 'key facts' document for information about the bond. So I consider it reasonable to conclude that it relied on that information along with SISL's recommendation that it 'accept the policy' in deciding to invest in the scheme.
- SISL knew or ought to have known that it was its 'key facts' document that potential investors were directed to for information about the bond. So it had an obligation to ensure that the 'key facts' document was clear, fair and not misleading. For the reasons already explained, the 'key facts' did not provide clear, fair and not misleading information about the bond.
- The scheme failed and NWIC has been liquidated. P has suffered a loss as a result. I consider it more likely than not that had SISL provided clear, fair and not misleading information about the risks involved with the bond, P would not have invested in the schemes. So it is fair that SISL compensate it for the loss.

### **fair compensation**

In assessing what would be fair compensation, I consider that my aim should be to put P in the position it would have been in but for SISL's failure.

For the reasons I have explained above, it is my conclusion that had the key risks of the bond - which was the key component of the SES - been explained clearly, it is more likely than not that P wouldn't have invested in the SES scheme at all.

I am satisfied P was looking to invest its money, so I think it would have invested elsewhere, but with capital protection. It is not possible to say precisely what it would have done differently. But I am satisfied that what I have set out below is fair, given its objective for growth with capital protection.

To compensate P fairly, the business should calculate the position P would now be in if its investments had produced a return matching the average rate for fixed rate bonds with 12 to 17 months maturity as published by the Bank of England.

I have chosen this method of compensation because in my view P wanted to achieve a reasonable return without risking any of its capital. The average rate would be a fair measure given its circumstances and objective. It does not mean that P would have invested only in a fixed rate bond. It is the sort of investment return a consumer could have obtained with little risk to their capital.

The compensation payable to P is the difference between the fair value and the actual value of their investment. If the actual value is greater than the fair value, no compensation is payable.

#### ***actual value***

This means the amount received by P out of the scheme.

Any amount received by P from the scheme should be deducted from the fair value at the point it was actually paid so it ceases to accrue any return in the calculation from that point on.

It is not clear whether at all P would receive any further disbursement from Scheme C. It seems unlikely. However, SISL could take ownership of the investment if it wishes to, provided P agrees. If it is not possible for SISL to take ownership, then it may request an undertaking from P that it repays to SISL any amount it may receive from the investment in future.

#### ***fair value***

To arrive at the fair value when using the fixed rate bonds as the benchmark, the business should use the monthly average rate for the fixed rate bonds with 12 to 17 months maturity as published by the Bank of England. The rate for each month is that shown as at the end of the previous month. Apply those rates to the investment on an annually compounded basis. The calculation should be made from the date of investment to date of my decision.

#### **my final decision**

For the reason's set out above, decision is to uphold P's complaint.

To put things right, Strathearn Insurance Services Limited should pay to P the fair compensation as set out above. It should also pay interest at 8% simple per year on this amount from date of decision to date of settlement, if compensation is not paid within 28

days of the business being notified of acceptance. Income tax may be payable on this interest payment.

Strathearn Insurance Services Limited should provide details of its calculation to P in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask P to accept or reject my decision before 29 April 2019.

Michael Fisher  
**ombudsman**

***Provisional decision - copy***

**complaint**

Mr R complains on behalf of P, a limited company, about a 'key facts' document produced by Strathearn Insurance Services Limited (SISL) in relation to a property deposit bond.

In summary, Mr R says that SISL failed to disclose material information and provide appropriate risk warnings in the 'key facts' document. He says that he decided to invest in three property investment schemes based solely upon the respective 'key facts' documents. The schemes all failed, and P lost its investment. Mr R says that had the full facts and risk disclosures been made in the 'key facts' documents, he would not have taken the decision to invest in the schemes and suffered financial loss. This provisional decision concerns P's investment into Scheme C.

**background**

Mr R is the sole director and shareholder of P, and he represents the company in this complaint. P is used by Mr R to manage his pension funds. Mr R is a member of IPIN Global Prospects Network ('IPIN'). This is an investment network which aims to provide real estate schemes to its members. IPIN is the trading name of a Spanish company – Global Prospects S.L.

IPIN typically marketed its schemes as 'secure exit strategies' ('SES'). As I understand it, under this strategy, the investors funded property developments such as hotels, student accommodation and residential care homes by way of a deposit. The deposits were initially sent to a lawyer where they are maintained within an escrow facility. The developer would draw the deposit down, when needed, to finance the project. The property units would be sold by the developer before a set date and the investor would get their deposit back, along with a share of any profits from the sale.

A key characteristic of SES schemes was the protection offered to the investors for their deposits. This was provided by the property developer entering into an insurance contract with an insurer.

So if a project failed or the developer defaulted, the investors - who were named as the beneficiaries of the insurance contract - could claim any difference between the deposit paid and any money already returned to them.

The deposits held in escrow facility could be drawn down by the developer only after they had put this insurance in place for each scheme. This insurance was called the Property Deposit Bond ('the bond'). P's complaint against SISL is in relation to this insurance product.

P invested in Scheme C in October 2012, paying a deposit of £55,000.

An insurer based in Nevis Northern & Western Insurance Company ('NWIC') underwrote the bond.

The company behind Scheme C went into liquidation. P received no payment from the property developer, so attempted to claim against the bond. However NWIC itself entered liquidation in January 2015. P complained to SISL that the insurance had failed to protect it in this project along with the others it had invested in. It said that had it been made aware the insurer was not regulated and its money was not protected, it wouldn't have entered into any of the transactions.

SISL did respond to P's complaint. It didn't think it was one our service could consider.

**findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I'm minded to uphold P's complaint for the reasons set out below.

*can we consider the complaint?*

SISL has previously objected to this service considering this complaint, and a number of others similar to it. Briefly, it has said P wasn't its customer, the deposit protection insurance wasn't a regulated product and that it did not carry out any regulated activity.

This was considered at length by us in another similar case and SISL recognises that the jurisdiction issues that are relevant to this case have been considered in the jurisdiction decision in that case. So I do not want to repeat that here. However, for avoidance of doubt - I am satisfied that this complaint is within our jurisdiction. In summary I consider that:

- (a) The property deposit bonds about which the consumers have complained are contracts of insurance.
- (b) SISL carried out the regulated activity of arranging (bringing about) deals in investments and/or making arrangements with a view to transactions in investments.
- (c) P is an eligible complainant.

### **relevant considerations**

I am required to determine this complaint on the basis of what I consider to be fair and reasonable in all the circumstances.

When considering what is fair and reasonable, I am required to take into account relevant law and regulations; regulator's rules, guidance and standards, and codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

The FCA handbook sets out the Principles which are a general statement of the fundamental obligations of the firms it regulates, such as SISL.

Principle 7 says:

*"A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear fair and not misleading"*

Client is defined as a customer and it includes potential client (and so potential customer).

P was a potential customer, and its complaint is essentially about what SISL communicated (or failed to communicate) to it through the 'key facts' document. So I consider that Principle 7 is relevant here.

I also consider that Principle 6 is relevant in this instance, which says: *"A firm must pay due regard to the interests of its customers and treat them fairly."*

IPIN provided Mr R with a promotional literature about the scheme. It was called the Investment Analysis Document (IAD). The IAD stated that the bond would protect the full amount of the deposit in the event of a contractual default by the developer. Investors were referred to a Key Facts document produced by SISL, which was included in the IAD.

The IAD said:

*"The property deposit is provided by the developer in association with Strathearn Insurance Services Ltd (see page 22)".*

Page 21 was entitled 'Professional Service Providers' and included the following:

*"PROPERTY DEPOSIT BOND*

*Strathearn Insurance*

*The SES application for [Scheme C] uses a Property Deposit Bond to protect 100% of the deposit funds invested by SES investors in the event that the developer defaults upon his obligations within the applicable purchase agreements.*

*The Property Deposit Bond is arranged on behalf of the developer by Strathearn Insurance Services Limited. Due to the regulated nature of the product offered any direct questions relating specifically to the bond aspect of the SES offering should be directed to Strathearn Insurance.*

*Please see Key Facts document issued by Strathearn Insurance overleaf.*

Page 22 is where SISL's 'key facts' document can be found.

So when SISL produced and provided the 'key facts' document for the IAD, it knew that the consumers were being referred to the 'key facts' for information about the bond. So SISL had an obligation to ensure that the information it provided about the bond was clear, fair, and not misleading.

#### **was the information provided clear, fair, and not misleading?**

P says it was not. It says:

- SISL did not name the insurer providing the property deposit insurance;
- SISL did not advise the insurer was not regulated by the FCA;
- SISL did not advise the insurer was not covered by the FSCS; and
- P wouldn't have invested had it been aware of the risks.

Having considered everything, I am minded to agree that the information provided in the 'key facts' document was not clear or fair; and was misleading.

There is no mention in the 'key facts' that the insurer was NWIC. The document does not say that NWIC was not regulated by the FCA. And there was no warning that should NWIC fail to meet its obligations, consumers would be unable to claim their losses under the Financial Services Compensation Scheme.

Also, considering that this was the document that the consumers were referred to in the marketing literature for explanation about the bond, it would be reasonable to expect that it explained the key terms and conditions of the policy but that wasn't the case. So I consider that the information wasn't clear.

Further, the 'key facts' document said: "*Strathearn Insurance recommends that you accept this policy, as it is designed to work specifically with the investment proposal developed for IPIN SES investors*".

However it did not highlight the potential risks as noted earlier. I consider that failing to balance its recommendation to potential customers to 'accept the policy' with explanation of the potential risks meant that the information was presented in a misleading, and not in a fair way.

Overall, I consider that SISL did not provide clear, fair and not misleading information about the insurance in its 'key facts' document provided to P.

#### **did P rely on the 'key facts' document?**

Having concluded that the 'key facts' document was not clear or fair, and was misleading, I need to consider how much reliance P placed on this document before it decided to make the relevant investment.

Mr R says that he relied solely on the 'key facts' document before making his decision to invest. To determine the likelihood of this, I have considered what it was he was looking for when he made that decision.

P is Mr R's pension vehicle. At the time, it had only one employee, Mr R. The money in the company, and ultimately invested in the scheme was from Mr R's life savings. He has said that at the time he was looking at the IPIN opportunities savings interest was very low, and he wanted to find a product that would return a profit over a fixed period, but which also offered capital security. He describes himself as a cautious investor, who had previously bought and sold investment properties, but had never been involved with something like the schemes IPIN promoted.

Mr R says the investments were attractive to him because they appeared to be secure, passive, investments which would yield a return in the medium term. He says the security offered by the insurance was what made the investments attractive to him, and that but for this security, he would never have invested.

Scheme C was the third, and final, project P invested in. And at the point of investing, the earliest scheme showed no signs of risk. P had invested in second scheme only a month before Scheme C.

Property schemes generally have potential for higher returns. So I can see why Mr R considered them as a way to enhance his retirement fund through P. On the other hand, they tend to involve a higher level of risk and that would not be suitable for his capital safety objective. However, in this instance the scheme was marketed as 'low risk exposure' and it is clear from the promotional literature that the protection offered through the bond was a key selling point to convince the consumers that the scheme was indeed 'low risk'. So, given its objective and circumstances, I am persuaded that P would not have considered investing in the scheme without the protection offered by the bond.

So the next question I have to consider is whether P relied on SISL's 'key facts' document for information about the bond before deciding to invest in the scheme.

It seems to me that to understand whether or not Mr R most likely relied on the 'key facts' document, it is necessary to first understand the features of the overall scheme. Then consider the role played by the deposit bond within that scheme. And then go on to consider what information was provided in relation to that product and whether the consumers relied on that information.

Thus whilst I have considered the bond within the wider context of the investment - to be clear - the key question I have considered is what the consumer has complained about - which is about the 'key facts' document provided by the SISL.

It seems to me that when P / Mr R was provided with the marketing literature Mr R would want to look at the information concerning the bond to ensure that it meets his objective. And IPIN directed potential investors to SISL's 'key facts' document for information about the insurance. The 'key facts'/IAD said:

*"Due to the regulated nature of the product offered, any direct questions relating specifically to the bond aspect of the SES offering should be directed to Strathearn Insurance".*

This clearly portrays SISL as the entity that potential investors needed to look to for information about the bond. And SISL portrayed itself in the 'key facts' as *"a specialised advisory services company dedicated to residential and commercial real estate markets"*. SISL also said *"The company's solutions are supported by leading international speciality insurance groups"*.

And SISL went on to state in the 'key facts':

*"What services will Strathearn Insurance provide you with?*

*Strathearn Insurance recommends that you accept this policy, as it is designed to work specifically with the investment proposal developed for IPIN SES investors. Strathearn Insurance does not offer advice on the SES investment proposal, the associated contracts or their interpretation.*

*You are recommended to obtain independent legal advice on all associated contracts, and the duties, responsibilities and obligations of the parties to the contracts."*

The way this is written I consider that a distinction was made between the insurance part of the scheme and the rest of the investment, and that SISL was portrayed as the financial business tasked with providing information about the insurance.

So I'm minded to find that Mr R looked at the things SISL said in the 'key facts' document in respect of the bond, and reasonably relied upon these representations when deciding to invest in the scheme.

SISL knew, or ought reasonably to have known, that potential investors would be directed to its 'key facts' document for information about the bond. So it had an obligation to ensure that document was clear, fair, and not misleading. But, as I've set out above, I'm not presently persuaded it did this.

The scheme P invested in failed and NWIC has been liquidated. P has suffered a loss as a result. And, from what I've seen so far, I think had SISL provided information about the risks involved with the bond which was clear, fair, and not misleading, it wouldn't have invested in the scheme. So it is fair that SISL compensate it for the loss.

#### **fair compensation**

In assessing what would be fair compensation, I consider that my aim should be to put P in the position it would have been in but for SISL's failure.

For the reasons I have explained above, it is my conclusion that had the key risks of the bond - which was the key component of the SES - been explained clearly, it is more likely than not that P wouldn't have invested in either SES scheme at all.

As explained, I am satisfied that Mr R was looking to invest his money through P, so I think he would have invested elsewhere through P, but with capital protection. I say this because Mr R has clarified that he was specifically looking to invest in Scheme C due to the capital protection it offered. It is not possible to say precisely what it would have done differently. But I am satisfied that what I have set out below is fair, given its objective for growth with capital protection.

To compensate P fairly, the business should calculate the position P would now be in if its investment had produced a return matching the average rate for fixed rate bonds with 12 to 17 months maturity as published by the Bank of England.

I have chosen this method of compensation because in my view P wanted to achieve a reasonable return without risking any of its capital. The average rate would be a fair measure given its circumstances and objective. It does not mean that P would have invested only in a fixed rate bond. It is the sort of investment return a consumer could have obtained with little risk to their capital.

The compensation payable to P is the difference between the fair value and the actual value of their investment. If the actual value is greater than the fair value, no compensation is payable.

#### **actual value**

This means the amounts received by P out of the scheme. As I understand it, P has so far received only one disbursement of about £2,200 from Scheme B's administrators in September 2015. If that is not the case, P should let me know.

Any amount received by P from the scheme should be deducted from the fair value at the point it was actually paid so it ceases to accrue any return in the calculation from that point on.

It is not clear whether at all P would receive any further disbursement from Scheme C. It seems unlikely. However, SISL could take ownership of the investment if it wishes to, provided P agrees. If it

is not possible for SISL to take ownership, then it may request an undertaking from P that it repays to SISL any amount it may receive from the investment in future.

***fair value***

To arrive at the fair value when using the fixed rate bonds as the benchmark, the business should use the monthly average rate for the fixed rate bonds with 12 to 17 months maturity as published by the Bank of England. The rate for each month is that shown as at the end of the previous month. Apply those rates to the investment on an annually compounded basis. The calculation should be made from the date of investment to date of my decision.

**my provisional decision**

Subject to any further submissions I should receive from either party by 23 February 2019, my provisional decision is that this complaint should be upheld. In full and final settlement of it, Strathearn Insurance Services Limited should pay P compensation as set out above.

It should also pay interest at 8% simple per year on this amount from date of decision to date of settlement, if compensation is not paid within 28 days of the business being notified of acceptance. Income tax may be payable on this interest payment.

Strathearn Insurance Services Limited should provide details of its calculation to P in a clear, simple format.

Michael Fisher  
ombudsman