

complaint

Mr and Mrs B's complaint is about a 'key facts' document produced by Strathearn Insurance Services Limited (SISL) in relation to a property deposit bond.

In summary, Mr and Mrs B say that SISL failed to disclose material information and provide appropriate risk warnings in the 'key facts' document. They say that they decided to invest in two property investment schemes based solely upon the respective 'key facts' documents. Both the schemes failed and Mr and Mrs B lost their capital. They say that had the full facts and risk disclosures been made in the 'key facts' documents, they would not have invested into the schemes and suffered financial loss.

background

Mr and Mrs B are members 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'). 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 the SES schemes was the protection offered to the investors for their deposits. A Property Deposit Bond ('the bond') was put in place for each scheme. Typically, the bond was underwritten by an insurer. The property developer was the policy holder. The investors who paid the deposits were named as beneficiaries.

If a project failed or the developer defaulted, the investors, as beneficiaries of the bond, could claim the difference between the deposit paid and any money already returned to them by the developer. Thus the presence of the bond meant that the investors were assured as a minimum the return of their capital. The deposits held in the escrow facility could be drawn down by the developer only after they had put this bond in place for each scheme.

Mr and Mrs B's complaint against SISL is in relation to the 'key facts' document produced by it about this bond.

Mr and Mrs B invested in two property schemes in 2012. They invested a total of about £87,000 in March 2012 in Scheme A and about £65,000 in Scheme B in May 2012. For both schemes, an insurer based in Nevis - Northern & Western Insurance Company ('NWIC') underwrote the bond.

In 2014 the company behind Scheme A went into liquidation and Mr and Mrs B received no payment from the property developer. So they attempted to make a claim to NWIC against the bond.

However NWIC itself entered into liquidation in early 2015, and Mr and Mrs B got no pay out from it. Mr and Mrs B then sought to pursue a claim in relation to the failure of NWIC to pay the claim, with the Financial Services Compensation Scheme ('FSCS'). But it turned out that this wasn't possible because NWIC wasn't covered by the FSCS.

Following this, they wrote to SISL and raised a complaint about the representations it had made in its 'key facts' documents. They told SISL that their decision to invest in Scheme A was solely based on the level of security offered by the bond, designed specifically to protect their deposit. They said that the money they put in to the scheme represented a major part of their retirement fund and had SISL's key facts document properly explained the risks, they wouldn't have entered into the transaction. By way of compensation they asked SISL to reimburse the sum they invested into the scheme together with interest which they could have reasonably expected had they placed their funds in a low risk investment.

Soon, Scheme B was placed into administration and under a similar set of circumstances Mr and Mrs B sent a similar letter of complaint to SISL - though as I understand it, Mr and Mrs B were later able to get some money back from the administrators of the scheme, but not their full deposit.

Not satisfied with SISL's response to their complaints, Mr and Mrs B brought their complaint against SISL to us.

SISL told us that we cannot consider the complaint. It said that Mr and Mrs B weren't its customers, and that the bond wasn't a regulated product.

Our investigator considered SISL's objection and wrote to it setting out in detail why she considered that this is a complaint we can consider. In summary she said that in her view the bond is a contract of insurance; SISL carried out one or more regulated activities; and Mr and Mrs B are eligible complainants.

SISL didn't respond specifically to her opinion. However SISL had raised similar jurisdiction objections on a number of similar complaints. Its objections in relation to one of those cases were considered by me and I issued a detailed jurisdiction decision in which I decided that we could look at that complaint.

The investigator considered Mr and Mrs B's complaint again in light of this decision, and after taking into account what I have said, remained of the opinion that this complaint is one we can consider. She therefore went on to consider it and expressed her opinion that the complaint should be upheld in her letter dated March 2018. I refer the parties to it. In summary, the investigator said:

- When SISL provided information about the bond it had a duty to ensure that the information it provided was clear, fair, and not misleading. The 'key facts' document did not provide sufficient information about the insurer. Also, the information was presented in a misleading, and not in a fair, way.
- The 'key facts' document was the only document that was available to potential investors before making the investment that explained the protection offered by the bond. SISL was aware of this. So by not providing adequate information about the bond, SISL did not pay due regard to the interest of its customers.
- Given their investment objective and risk attitude it is more likely than not that Mr and Mrs B wouldn't have invested but for the existence of this bond and

SISL's assurances - as the expert - in relation to it, along with its recommendation that they 'accept the policy'.

- Both projects have failed and NWIC has been liquidated, Mr and Mrs B have suffered a loss as a result. So it is fair that SISL compensate them for their loss.

SISL did not accept the investigator's opinion. 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 Mr and Mrs B fall within the ordinary meaning of a client. There was no retainer of SISL by the consumers and no remuneration was paid by the consumers to SISL.
- 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 the investigator failed to take into account.
- It is not clear whether the consumers had seen any of the schedules to the bond setting out the details of NWIC before they committed to investing. If they had sight of the schedule they would have been aware that NWIC was based overseas and so the argument that they would not have invested had they been aware of NWIC's status falls away.
- It cannot be said that the consumers relied on the 'key facts' document as it appears quite possible that if the same bond had been in place and the consumers were told of the bond but the 'key facts' document had not been present, the consumers would still have gone ahead with the scheme.

As SISL did not accept the investigator's finding, the case has been referred to me for a review and decision.

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 have reached the same conclusion as the investigator for essentially the same reasons.

For ease of reference, I have discussed the relevant points referring to documents relating to Scheme A. I have carefully considered the relevant documents relating to Scheme B. I am satisfied that SISL played a similar role in respect of scheme B too. In particular, I note that the language used in the 'key facts' is largely identical and so my findings below apply to Scheme B too.

can we consider the complaint?

This has been dealt with at length by the investigator. SISL also recognises that I have made detailed jurisdiction findings in connection with a similar case.

I have carefully considered all the facts and circumstances of Mr and Mrs B's case and 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) Mr and Mrs B are eligible complainants.

As I said, the issue of jurisdiction has already been dealt with in detail by the investigator. Later I considered the issue at great length in another case and elaborated on it. The complainant in that case invested in the same two schemes as Mr and Mrs B and thus SISL's involvement in relation to the deposit bonds of the schemes was broadly the same. 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. I will however address the jurisdiction point raised by SISL following investigator's opinion.

SISL says that Mr and Mrs B do not fall within the ordinary meaning of a client, there was no retainer of SISL by the consumers and no remuneration was paid by the consumers 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 "*

As noted earlier, Mr and Mrs B were beneficiaries under contracts of insurance. And for the reasons already explained, I am satisfied that the contract of insurance was taken through SISL. So I consider that Mr and Mrs B are eligible complainants under DISP 2.7.6(5)R.

It may be that no remuneration was paid directly by Mr and Mrs B 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. The premium in turn was 2.25% of the deposit paid by Mr and Mrs B. Of this, 2% was retained by NWIC and 0.25% was paid as commission to SISL.

In addition, I also consider that Mr and Mrs B are eligible complainants under DISP 2.7.6(2)R. It may be that there was no 'retainer' of SISL by Mr and Mrs B but I am satisfied that they were potential customers 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 Mr and Mrs B did not eventually approach SISL but SISL made its services available to them 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 Mr and Mrs B were potential customers of SISL and therefore eligible complainants under DISP 2.7.6(2)R as well.

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).

Mr and Mrs B were potential customers of SISL, and their complaint is essentially about what SISL communicated (or failed to communicate) to them 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."*

As I understand it, IPIN took an advertisement about the scheme and circulated it to its members. This said: *"The property deposit is provided by the developer in association with Strathearn Insurance Services Ltd... Strathearn insurance have provided a set of Key facts associated with the property deposit bond which can be viewed in the IAD"*.

The IAD said:

"The property deposit is provided by the developer in association with Strathearn Insurance Services Ltd (see page 17)". Page 17 is where SISL's 'key facts' document can be found.

Likewise, in relation to Scheme B the IAD said:

"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 overleaf".

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.

SISL has recently said 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 occasion. The IAD also refers to it as a key facts document and not as an Initial Disclosure Document.

In any event, I consider that 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 it had an obligation to ensure that this communication was clear, fair and not misleading.

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

Mr and Mrs B say it was not. They say that:

- there was no mention in the 'key facts' document that the insurer was NWIC – it merely refers to a 'single international insurance company' which could well have been within the European Union
- there was no mention that the insurer was not regulated by the FCA
- there was no mention that the UK's Financial Services Compensation Scheme would not apply to the insurer as the insurer was based overseas
- there was no mention that NWIC was itself not insured by a third party and
- there was not even a risk warning to the effect that should the insurer be unable to meet its financial obligations then the consumers would not be able to claim their loss through the Financial Services Compensation scheme.

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

As mentioned by Mr and Mrs B, there is no mention in the document that the insurer was NWIC. There is no mention that the insurer was not regulated by the FCA. There was no warning that should the insurer be unable to meet its financial obligations then the consumers would not be able to claim their loss 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.

Moreover, in responding to the investigator's opinion, SISL has provided us with a copy of what is described as 'Amended particulars of Claim'. It appears to be a claim made before the high court against some solicitors in connection with a few IPIN schemes, including Scheme A. Amongst other things, it states that at the relevant time there was publicly available information that raised serious concerns about the appropriateness of NWIC as the bond provider and whether NWIC would be willing and able to honour its obligations under the bond.

If that is the case, I consider that it was all the more important when SISL recommended the potential investors that they 'accept the policy', it balanced that with an explanation that they would not be covered by the FSCS if the insurer failed to meet its obligations.

Overall, I agree with the investigator that SISL did not provide clear, fair and not misleading information about the insurance in its 'key facts' document provided to Mr and Mrs B.

did Mr and Mrs B 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 Mr and Mrs B placed on this document before they decided to make the relevant investment.

Mr and Mrs B have consistently said that they relied solely on this 'key facts' document before making their decision to invest in the schemes. To determine the likelihood of this, I have considered what it was that the consumers were looking for when they decided to make the investment.

Mr and Mrs B were in their early 60's at the time they invested in the two schemes. Mrs B didn't have any independent investment experience and let Mr B handle the investments. Mr B has explained that their investment objective was to invest for growth to enhance their retirement fund but in a capital protected environment. Given their circumstances, I accept this to be a likely objective.

Property schemes generally have potential for higher returns. So I can see why Mr and Mrs B considered them in order to enhance their retirement fund. On the other hand, they tend to involve a higher level of risk and that would not be suitable for Mr and Mrs B's capital safety objective. However, in this instance the schemes were marketed as '*ultra 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 schemes were indeed 'low risk'. So, given their objective and circumstances, I am persuaded that Mr and Mrs B would not have considered investing in the schemes without the protection offered by the bond.

So the next question I have to consider is whether Mr and Mrs B relied on SISL's 'key facts' document for information about the bond before deciding to invest in the schemes.

It seems to me that when Mr and Mrs B were provided with the marketing literature they would want to look at the information concerning the bond to ensure that it meets their objective. And as previously noted, IPIN directed the potential investors like Mr and Mrs B to SISL's 'key facts' document for that information. For instance, the key facts' document of Scheme A said:

"The Property Deposit Bond is arranged on behalf of the developer and IPIN SES investors 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 using the contact details below"

Similar wording was used in Scheme B's IAD, as noted earlier.

This clearly suggests to me that SISL was portrayed as the entity that the potential investors should look to in relation to information about the bond.

Indeed in the 'key facts' document SISL portrayed itself as a "*specialised advisory services company dedicated to residential and commercial real estate markets*". It further 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 investor.

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 contract, 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, and that SISL was portrayed as the financial business tasked with providing information about the insurance.

So, I think it is reasonable to conclude that Mr and Mrs B looked at what SISL stated in the ‘key facts’ document about the bond, and relied on it when they decided to proceed with the schemes.

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. It questions whether the investigator has asked for evidence from Mr and Mrs B to show whether or not they were high net worth / sophisticated investors. It says that this is relevant to the question of whether Mr and Mrs B relied on the ‘key facts’ document.

Mr and Mrs B on the other hand say that they were not sophisticated investors. They say that in any case, their investment experience would not make them sophisticated or knowledgeable in aspects of insurance.

Mr and Mrs B have told us that Mrs B didn’t have any independent investment experience and let Mr B handle the investments. It seems that Mr B does have some investment experience including past investments in property schemes through IPIN.

But 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 Mr and Mrs B’s contention that they were 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 they say that they 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 the investigator failed to take into account.

Mr and Mrs B on the other hand say that they did not seek advice about the insurance from their solicitors as they relied on SISL’s ‘key facts’ document. They say that they consulted solicitors only in relation to the conveyancing aspect of the transaction.

SISL says we simply can't take their word for it. It has referred us to the 'Amended particulars of Claim' document to show that some investors have made a claim against firms of solicitors. It is not clear what has happened to this claim – but in any case Mr and Mrs B have confirmed that they were not involved in this action and I have no reason to doubt them.

Nevertheless, 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 Mr and Mrs B consider that another professional also failed them in their obligations, then it is up to them to decide whether they want to take action against either or both. In my view, even if another professional was involved concerning the bond (which Mr and Mrs B deny was the case), that does not absolve SISL of the obligations it owed to its customers or potential customers. Mr and Mrs B consider that SISL failed in its obligations to them and they are entitled to bring their complaint about SISL to us, which they have 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 Mr and Mrs B 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 documents provided later also did not highlight the risks involved adequately - for example, they did not highlight the lack of FSCS protection.

SISL has also argued that Mr and Mrs B 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.

It may be that on previous occasions Mr and Mrs B invested in IPIN schemes without 'key facts document' from SISL. But they were provided information about the insurance in relation those particular schemes by IPIN itself or by some other entity. And if something had gone wrong with those schemes and had Mr and Mrs B lost out, then there was nothing to prevent them from taking action against those entities for providing any misleading information, just as they have done with SISL here.

As it happened, I understand that one of the previous schemes did fail but the insurer on that occasion was a big international company regulated by the FCA and covered by the FSCS, unlike NWIC in this instance. When the scheme failed their deposit was protected by the insurance company and they were able to claim their money back. However, in this instance, the insurer was quite different to the one who offered the protection in earlier schemes and as noted, IPIN directed the potential investors to SISL's 'key facts' document for information about this company 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 Mr and Mrs B would have gone ahead with the scheme.

In other words, that the bond was in place isn't just the reason why Mr and Mrs B invested in the scheme. They invested in the scheme with the belief that the bond would satisfy their 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 them to believe so.

In responding to the investigator's opinion, SISL said that the investigator has conflated two different things - the insurance and the 'key facts' document. I do not think that was the case.

The insurance cannot be considered in a vacuum. It seems to me that to understand whether or not Mr and Mrs B 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 consumers have complained about - which is about the 'key facts' document provided by the SISL.

summary

In summary I find that:

- When Mr and Mrs B decided to invest in the property schemes they were 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 Mr and Mrs B's risk appetite. However the security of capital was provided through the bond.
- Given their risk appetite, I am satisfied that Mr and Mrs B would have wanted to consider the information provided in relation to that bond before deciding to invest in the scheme. They were directed to look into SISL's 'key facts' document for information about the bond. So I consider it reasonable to conclude that they relied on that information along

with SISL's recommendation that they '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.
- Both schemes have failed and NWIC has been liquidated. Mr and Mrs B have 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, they would not have invested in the schemes. So it is fair that SISL compensate them for the loss.

fair compensation

In assessing what would be fair compensation, I consider that my aim should be to put Mr and Mrs B in the position they 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 Mr and Mrs B wouldn't have invested in either SES scheme at all.

I am satisfied Mr and Mrs B were looking to invest their money, so I think they would have invested elsewhere, but with capital protection. It is not possible to say precisely what they would have done differently. But I am satisfied that what I have set out below is fair, given their objective for growth with capital protection.

To compensate Mr and Mrs B fairly, the business should calculate the position Mr and Mrs B would now be in if their 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 Mr and Mrs B wanted to achieve a reasonable return without risking any of their capital. The average rate would be a fair measure given their circumstances and objective. It does not mean that Mr and Mrs B 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 Mr and Mrs B 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 Mr and Mrs B out of the two schemes. As noted by the investigator it appears that Mr and Mrs B received no payment from Scheme A but some payment from Scheme B. These payments 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.

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.

my final decision

Where I uphold a complaint, I can make a money award requiring a financial business to pay compensation of up to £150,000, plus any interest and/or costs that I consider appropriate. If I consider that fair compensation exceeds £150,000, I may recommend the business to pay the balance.

determination and award: I uphold the complaint. I consider that fair compensation should be calculated as set out above. My decision is that Strathearn Insurance Services Limited should pay Mr and Mrs B the amount produced by that calculation – up to a maximum of £150,000.

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 Mr and Mrs B in a clear, simple format.

recommendation: If the amount produced by the calculation of fair compensation exceeds £150,000, I recommend that Strathearn Insurance Services Limited pays Mr and Mrs B the balance. I also recommend that it pays interest at 8% simple per year on this balance 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.

This recommendation is not part of my determination or award. It does not bind Strathearn Insurance Services Limited. It is unlikely that Mr and Mrs B can accept my decision and go to court to ask for the balance. Mr and Mrs B may want to consider getting independent legal advice before deciding whether to accept this decision.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr and Mrs B either to accept or reject my decision before 24 October 2018.

Raj Varadarajan
Ombudsman