



<b><u>Decision Ref:</u></b>	2018-0209
<b><u>Sector:</u></b>	Insurance
<b><u>Product / Service:</u></b>	Whole-of-Life
<b><u>Conduct(s) complained of:</u></b>	Disagreement regarding Settlement amount offered
<b><u>Outcome:</u></b>	Partially upheld

#### **LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

##### **Background**

The complaint relates to an Investment Bond which was purchased by the Bondholders and sold by independent financial advisers. The Complainant is the executor for the Bondholder's estate. The Investment Bond was taken out in 1995 and the Bondholders had a document saying "Sum assured: £365,323.00."

On the death of the Bondholder, a claim was made on the life insurance which it is argued the Provider is now valuing at £109,659.32.

The complaint is that the Provider is incorrectly and unreasonably failing to pay the full sum assured.

##### **The Complainant's Case**

It is the Complainant's position that in the last surviving bondholder's effects he discovered the Investment Bond which had commenced on 13<sup>th</sup> November 1995 with a sum assured of £365,321.00. The Complainant received correspondence from the Provider stating that the sum assured was only £109,659.32. The Complainants received correspondence from the Provider stating that the original policy schedule contained an error in the figures. In a letter dated 5<sup>th</sup> August 2016 the Provider stated that the document containing the disputed figure £365,321.00 was a "quotation".

The Complainant seeks the payment of the full Sum Assured of £365,321.00.

### **The Provider's Case**

The Provider's position is that the Bond was taken out in November 1995 without any defined Sum Assured. The Provider says that the Product purchased was a Single Premium Unit Linked Investment Bond and did not provide a defined Sum Assured as standard. The Complainant maintains that a Sum Assured of £365,323.00 was the amount that would be payable on death in line with the contract documents issued when the Bond went into force.

The Provider states that the Sum Assured on the Contract was 101 % of the value of the bond on the date of notification of death of the life assured. This it says is what is confirmed on the Contract Schedule and detailed in the Contract Terms & Conditions. The Provider states that it accepts that an administration error was made on the Post Sales Key Features document issued to the clients along with their Contract documents and quoted a sum assured of £365,323.00.

The Provider maintains that it is the Contract Schedule and Contract Terms and Conditions that form the legal contract with the Bond owner(s) and it is the contractual document that confirms the correct death benefit payable. The Provider submits that in looking at the dates of the Pre Sales key Features documents on its files and the Post Sales Key Features document, the Post Sales document, as issued to the client predates the Pre Sales document that it has scanned. The Provider says that whilst this does not negate from the error, it can only be assumed that an incorrect 1<sup>st</sup> page was attached to the documents issued to the client.

### **Evidence**

26 January 2016 – Letter from Complainant's representative:

*"The Executor has asked that we specifically raise with you the issue as to the sum payable under this bond.*

*When his parents .. took the policy out on 30<sup>th</sup> November 1995, the same had a sum assured of £365,323.00.*

*We note you are now suggesting the sum payable is somewhat less than this, perhaps we could have a full breakdown with clarification as to this".*

9<sup>th</sup> March 2016 – Provider's response:

*"Further to our previous correspondence, please be advised that the Death Benefit payable on this bond is €102,791.75".*

17<sup>th</sup> March 2016 – The Complainant asks the Provider to "explain the discrepancy" in the figures.

/Cont'd...

26 April 2016 – The Provider responds to query as follows:

*“Please note that this bond was set up on an investment only basis. There is no sum assured”.*

10<sup>th</sup> May 2016 – Telephone call - The Complainant further queries the matter.

3<sup>rd</sup> June 2016 – The Complainant contacts the Provider and refers back to the telephone call of 10<sup>th</sup> May 2016. The Complainant seeks a clear explanation as the difference between the sum shown on the policy and the sum the Provider states is due. In a telephone call on 10<sup>th</sup> May 2016 the Provider undertook to investigate and provide a full written response.

13<sup>th</sup> June 2016 – Letter from the Provider to the Complainant (The Complainant’s position is that this was not received). The letter stated:

*“Please note that this bond was set up on an investment only basis. There is no sum assured. We have been made aware by our New Business Department that the original Policy schedule contained an error in the figures. I can confirm that the Death Benefit on this bond is €102,791.75”.*

8<sup>th</sup> July 2016 – the Complainant seeks a response to the matter as previously requested.

14<sup>th</sup> July 2016 – the Complainant to Provider advising that it had not been able to access the letter that was re-sent by the Provider.

18<sup>th</sup> July 2016 – Provider’s Final Response on issue stating it is satisfied that the Complainant has been made aware of the correct sum assured and that the policy schedule correctly outlined the 101% benefit that applied.

19<sup>th</sup> July 2016 – the Complainant confirms receipt of re-sent letter dated 13<sup>th</sup> June 2016 and advises the Provider that they had not previously received same. The Complainant refers to the contradictory extract where a larger sum is mentioned. [This letter possibly crossed with Provider’s of 18<sup>th</sup> July 2018].

5<sup>th</sup> August 2016 – The Provider advised the Complainant that what he had enclosed in his recent letter was a quotation, and that the schedule and Financial Review refers to 101%.

7<sup>th</sup> September 2016 – The Complainant queries the Provider on the nature of the document. The Provider had stated in its letter of 13<sup>th</sup> June that:

*“The original policy schedule contained an error in the figures”.*

22<sup>nd</sup> September 2016 – The Provider advised that:

*“Enclosed with your letter of 8 July 2016 was a quotation”.*

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Schedule / Quotation

The Document that the Complainant is relying upon and which the Provider refers to as being a Quotation states as follows:

*"How Much Is Invested?"*

*Sum Assured: £365,323.00"*

This document is numbered "Page 1" and does not describe on the page what it is, that is whether it is a Schedule or a Quotation.

Pre Sales Illustration (as per Provider File)

*"How Much is Invested?"*

..

*Sum Assured £365323*

..

- *In the event of the last death of the lives assured, an amount equal to the greater of the sum assured and the encashment value would be payable".*

Attached to this Illustration is a 4 page Document numbered: "Page 1", "Page 2", "Page 3", and "Page 4". Page 1 is the same as the document that the Complainant is relying upon as a Schedule. On the 3<sup>rd</sup> page the following is stated:

*"Note This illustration should be read in conjunction with the Key Features folder .... For further information, please refer to our Personal Investment Bond brochure ..".*

It is also noted that date stamp stating: "ISSUED – 5 Dec 1995 – File Copy" appears on page 4 and 5 of this illustration.

Personal Financial Review completed in 1995

*"Death Benefit*

*Whilst the Bond has the facility to provide additional life cover this is not required and as such I have advised a "Standard" death Benefit of 101% of the value of the units.*

*My recommendation is acceptable to my clients".*

Declaration on Personal Financial Review signed by the Applicants and dated 1<sup>st</sup> November 1995:

*"We confirm that the above information is correct and has been provided on the understanding that it will be used in strict confidence and that it places me/us under no obligation to take up any suggested recommendation. If any Life contract*

/Cont'd...

*arrangement of pension policy is to be surrendered or made paid up I/we confirm that the financial consequences have been fully explained to me / us".*

Key Points

*"4. Life Cover*

*Death benefit exist at 101% of the value of your units"*

Policy Schedules issued in 1995

*"Death Benefit Rate 101%"*

Policy Conditions

*"1 Introduction*

*1.1 General*

*These Policy Conditions and the Schedule(s) containing the Reference SAE PIB/002 form the Assurance Bond specified on the Schedule(s) issued by [the Provider] ("the Company"). The policy specified on each Schedule confirms a contract of assurance ("the Policy") between the Company and the Policyholder named on the Schedule, constituted by an application and declaration made to the Company by the Policyholder and by the Company's acceptance of that application. In consideration of the payment to the Company of the premium shown in the Schedule, the Company shall pay the benefits described herein to the Policyholder, subject to the provisions contained in these Policy Conditions and Schedule, any other documents specified in the Related Policy Documents section of the Schedule, and any endorsement document relating to the Policy".*

*"5.6 Death Benefit*

*Subject to these Policy Conditions, the Death Benefit payable on the death of the Life Assured under the Policy shall be the amount that would be payable on a request for surrender of the Policy on the date of notification of the death, multiplied by the Death Benefit Rate and converted to the Death Benefit Currency.*

*On payment of the above benefit, the number of units allocated to the Policy will be reduced to zero and the Policy shall terminate".*

Policy Schedule date stamped as issued on 5<sup>th</sup> December 1995.

The Policy Schedule states as follows:

*"Related Policy Documents*

*Policy Conditions: SAE PIB/002*

*Deceased Owner Provisions Reference: 7/94"*

This Schedule states that the Death Benefit Rate is 101%

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## **Decision**

During the investigation of this complaint by this Office, the Provider was requested to supply its written response to the complaint and to supply all relevant documents and information. The Provider responded in writing to the complaint and supplied a number of items in evidence. The Complainant was given the opportunity to see the Provider's response and the evidence supplied by the Provider. A full exchange of documentation and evidence took place between the parties.

In arriving at my Legally Binding Decision I have carefully considered the evidence and submissions put forward by the parties to the complaint.

Having reviewed and considered the submissions made by the parties to this complaint, I am satisfied that the submissions and evidence furnished did not disclose a conflict of fact such as would require the holding of an Oral Hearing to resolve any such conflict. I am also satisfied that the submissions and evidence furnished were sufficient to enable a Legally Binding Decision to be made in this complaint without the necessity for holding an Oral Hearing.

A Preliminary Decision was issued to the parties on 18th October 2018, outlining the preliminary determination of this office in relation to the complaint. The parties were advised on that date, that certain limited submissions could then be made within a period of 15 working days, and in the absence of such submissions from either or both of the parties, within that period, a Legally Binding Decision would be issued to the parties, on the same terms as the Preliminary Decision, in order to conclude the matter.

The Complainant acknowledged receipt of the Preliminary Decision on 31<sup>st</sup> October 2018 and confirmed that they had no further submissions to make. In the absence of additional submissions from the parties, the final determination of this office is set out below.

## **Analysis**

The following is what I find in relation to the complaint that has been raised by the Complainant.

- The document that the Complainant is relying upon as being a Policy Schedule is not a Schedule applicable to the Bond, but is a separate document issued to the Bondholder. I find that the document does not mention the word Schedule. The document does not contain the Reference identified in the Terms and Conditions that should appear on the Schedule. The Terms and Conditions state that:

*“These Policy Conditions and the Schedule(s) containing the Reference SAE PIB/002 form the Assurance Bond specified on the Schedule(s) issued by [the Provider] (“the Company”)”.*

The document that the Complainant is relying upon is numbered "Page 1", indicating that there were other pages. The Provider has submitted the further pages and the document is referenced on same as being an *Illustration*. On the 3<sup>rd</sup> Page it states:

*"Note: This illustration should be read in conjunction with the Key Features folder .... For further information, please refer to our Personal Investment Bond brochure .."*

It is also noted that the document is date stamped, as follows: "ISSUED – 5 Dec 1995 – File Copy".

- The Schedule, with the Reference SAE PIB/002, that is applicable to the Bond makes it clear that the benefit under the Bond was "Death Benefit Rate 101%"

I accept that the Bond and the Bond Schedule are the governing documents and that the Benefit that the Provider says is payable, is the correct Sum Assured Benefit. However, I have concerns about how the Provider caused confusion when the matter was raised by the Complainant on the death of the Bondholder.

The Provider accepts that the administration error in confirming the sum assured of £365,323.00 on the document in question, would have been misleading to the customer as it conflicted with:

- The Clients Application
- The Financial Adviser's recommendation and acceptance by the client that no sum assured was required.
- The Contract Schedules
- The Terms and Conditions
- Non request of Declaration of Health and underwriting for a Defined Sum Assured.

This confusion would have been caused both to the Policyholder and those dealing with matters after the Policyholder's death. In regard to the confusion that was caused by the Provider, when the matter was brought to its attention, the following is noted:

In a letter dated 13<sup>th</sup> June 2016 the Provider stated that:

*"We have been made aware by our New Business Department that the original Policy schedule contained an error in the figures".*

In a letter dated 5<sup>th</sup> August 2016 – The Provider advised the Complainant that, the document he had enclosed in his recent letter, was a *Quotation*.

In its response to the complaint the Provider refers to the disputed document as a "Post Sales Key Features document".

I find no evidence in the submissions or responses from the Provider where it correctly referred to the document as to what it was, that is an *Illustration*. This would have been the

correct document identifier and would have been in line with what the Provider specifically stated it was, in the document itself.

With regard to the provision of information it would be reasonable to expect a Provider to make sure that all information it provides to a customer is clear and comprehensible.

I do not consider that the Provider was so clear in the instances outlined above.

Having regard to all of the above, while it is my Legally Binding Decision that the correct benefit payable under the Bond is 101% of the value of the Bond units, I consider that a compensatory payment is merited in respect of the Provider's failure to correctly identify in its communications with the Complainant (in response to the complaint) the nature of the document that contained the error. The importance of a Provider being clear and accurate in its communications, is particularly required, in relation to the life cover that is provided by the contract, and when a death claim arises in respect of same. I consider that additional stresses or confusion should not be caused at such a sensitive time following a bereavement. Therefore, it is my Legally Binding Decision that the complaint is partially upheld and I direct that a compensatory payment of Stg£5,000 (Five thousand pounds sterling) is to be made to the Complainant.



## **Conclusion**

- My Decision pursuant to **Section 60(1)** of the ***Financial Services and Pensions Ombudsman Act 2017***, is that this complaint is partially upheld, on the grounds prescribed in **Section 60(2)(g)**.
- Pursuant to **Section 60(4) and Section 60 (6)** of the ***Financial Services and Pensions Ombudsman Act 2017***, I direct the Respondent Provider make a compensatory payment to the Complainant in the sum of Stg£5,000, to an account of the Complainant's choosing, within a period of 35 days of the nomination of account details by the Complainant to the provider. I also direct that interest is to be paid by the Provider on the said compensatory payment, at the rate referred to in **Section 22** of the ***Courts Act 1981***, if the amount is not paid to the said account, within that period.
- The Provider is also required to comply with **Section 60(8)(b)** of the ***Financial Services and Pensions Ombudsman Act 2017***.

The above Decision is legally binding on the parties, subject only to an appeal to the High Court not later than 35 days after the date of notification of this Decision.

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**GER DEERING**  
**FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

12<sup>th</sup> November 2018

Pursuant to **Section 62** of the ***Financial Services and Pensions Ombudsman Act 2017***, the Financial Services and Pensions Ombudsman will publish legally binding decisions in relation to complaints concerning financial service providers in such a manner that—

- (a) ensures that—
  - (i) a complainant shall not be identified by name, address or otherwise,
  - (ii) a provider shall not be identified by name or address,and
- (b) ensures compliance with the Data Protection Regulation and the Data Protection Act 2018.