# R(IS) 7/98

**Mr. P. L. Howell QC** **CIS/7330/1995**
**22.1.97**

## Capital - investment bond - whether to be disregarded as the "surrender value of a policy of life insurance"

In late 1993, the claimant went into a nursing home, and on 1 December 1993 claimed income support through her appointee. On 23 December 1983, she had invested £10,000 in an "investment bond" with a life assurance office. The surrender value of the bond was linked to the performance of an investment fund and could be realised at any time. There was an option to obtain monthly payments by partial surrender which the claimant exercised. A guaranteed minimum death benefit was payable insofar as the bond was not cashed before the claimant died, but this was substantially below the cash value obtainable during the claimant's lifetime. A tribunal decided that the outstanding cash value of the bond should be taken into account as capital for income support. The claimant appealed.

*Held* that:

1. the cash value of the bond fell to be disregarded as capital under paragraph 15 of Schedule 10 to the Income Support (General) Regulations 1987, as the "surrender value of a policy of life insurance". It was sufficient that the bond contained provisions for payment on contingencies dependent on human life, even if those provisions were peripheral to the main purpose of the bond: CIS/122/1991 and *Gould v. Curtis* [1913] 3 KB 84 applied (paras. 10, 11, 12(1) and (2));

2. where a significant amount is invested in such a bond, so that its value falls to be disregarded as actual capital, this operates as a "deprivation" and an adjudication officer should always consider whether the investment was made for the purpose of securing entitlement to income support then or later. There is no "safe period" for the purposes of regulation 51(1) of the Income Support (General) Regulations 1987 (para. 12(3)).

## DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. The decision of the social security appeal tribunal given on 20 February 1995 on the treatment of this lady's capital assets for income support was in my judgment erroneous in point of law. I set it aside and as there is no dispute on the facts I exercise the power in s. 23(7)(a) Social Security Administration Act 1992 to give the decision I consider the tribunal should have given on the evidence and issues before them.

2. My decision is that:

(a) the surrender value of the claimant's investment bond with the Equity & Law Life Assurance Society has to be disregarded in calculating her capital for income support, under reg. 46 and para. 15 of Sch. 10, Income Support (General) Regulations 1987, SI 1987 No. 1967; and

(b) there is no other provision that makes the bid value of the outstanding units count as capital in some other way; but

(c) so long as the total of that outstanding value and any other capital assets she had (as valued under the regulations) was over £8,000, the periodic payments she received from the withdrawal option in force

> under the policy count as capital payable by instalments and must be treated as her income as under reg. 41 *ibid.*

The case is remitted to the adjudication officer to calculate the actual amount of income support due to the claimant from 1 December 1993 on this basis, after taking into account her other assets and resources, and considering whether any amounts have to be added back in as "notional capital" under reg. 51, these points not being covered in the papers before me.

3. The claimant was born in January 1902. At the end of 1993 she had become so old that she was unable to manage her own affairs and was having to move into a nursing home, where she was looked after until she died in June 1996. A claim for income support was made on 1 December 1993 by her daughter acting on her behalf under an enduring power of attorney conferring general authority to deal with all her property and affairs, and this appeal has been pursued by the daughter in the same capacity. Now that her mother has died it will be necessary to have a grant of probate produced or an appointment made by the Secretary of State under reg. 30, Claims and Payments Regulations 1987, SI 1987 No 1968, before the case can be finalised or any arrears paid, and I direct the adjudication officer to check that this is done in due course.

4. The sole issue on the appeal is how to treat an "investment bond" which the claimant herself took out on 23 December 1983 with the Equity and Law Life Assurance Society. According to details obtained from the life office in the case papers at pages T43 to T47 inclusive, on that day she invested a lump sum of £10,000 in the "bond", which is a contract written as a life assurance policy, or rather a cluster of single premium life assurance policies. Unlike a normal life policy for the whole of life or for a fixed number of years these policies have no set maturity date and can be encashed at any time, though to make them count as life assurance at all there is a low guaranteed minimum death benefit which may be payable if the investor dies before cashing in all the investment.

5. The real value however is in the encashment options. Under an ordinary life assurance contract the policyholder usually has an option to surrender his policy early for cash, generally at an unattractive rate so that he may not even get as much back as he has put in by way of premiums. Under investment bond policies such as those taken out by this claimant the surrender terms are far more generous, and are calculated by reference to unit values so that on surrender or cashing in, the holder receives a "bid price" depending on the performance of an investment fund into which his or her lump sum investment has been notionally allocated. A further widely used option is the "monthly withdrawal plan" which can be set up to give the investor regular spending money by partial encashment every month at whatever rate is chosen, until the total bid value of the investment is exhausted. The claimant in this case had exercised this option so that £75.20 a month was contractually payable to her out of her investment at all relevant times.

6. At the tribunal hearing on 20 February 1995 the claimant's daughter gave evidence that the surrender value that morning was £8,293.60, which was the total bid value obtainable from the insurer if all the policy units were then cashed in, and the minimum death guarantee (which decreased as units were surrendered from time to time) something over £4,000. The exact figures do not matter, but it is common ground that the minimum death benefit was contemplated as being in all likely

circumstances well below the bid value of the units (so that no significant mortality risk was being underwritten by the life office), and the tribunal so found. The tribunal also recorded findings of fact that the claimant, or her daughter on her behalf, had at all material times been at liberty to withdraw the entirety of the investment and that at no time before the date of the hearing had the outstanding units had an aggregate surrender value of less than £8,000.

7. The tribunal went into the legal issues with considerable care and concluded that the claimant's capital for the period from 1 December 1993 was in excess of the prescribed amount of £8,000, as the bond counted as a capital investment at its full realisable value, rejecting arguments that the value should be disregarded as the "right to receive outstanding capital instalments" under Sch. 10, para. 16, or the "surrender value of a policy of life insurance" under para. 15. The question is whether they were right about this and I have reached the conclusion that they were not.

8. The overstretching of the concept of life assurance by the life offices and the financial services industry to cloak almost any type of investment product has been a feature of the financial scene for many years. Investment bonds such as the one at issue in this case have been widely marketed, and although the tax advantages originally intended to flow from them have been reduced or eliminated by fiscal legislation it has not so far as I know been suggested that contracts of this type issued by reputable offices are really a sham, outside the scope of life assurance business altogether. The fact that they are written as life assurance policies cannot therefore be ignored.

9. The adjudication officer in a helpful submission dated 3 November 1995 draws my attention to the decision of a most experienced Commissioner in case CIS/122/1991, where he held that a very similar kind of bond was a "policy of life insurance" within the definition in reg. 2(1) of the Income Support Regulations which applies to para. 15 of Sch. 10. He pointed out that to fall within the definition it is not necessary that the **only** contingency under which a contract should provide for the payment of money is the death of a human life, and as he says in para. 28 "it is perfectly plain that the bond is a hybrid animal. I do not consider that the fact that it had advantages as an investment necessarily meant that it could not also be regarded as a form of life insurance." He therefore held that as the policy terms included provision for a precise cash sum to be calculated and payable in the event of the death of the policyholder, the whole policy fell within the definition so that the surrender value of the units had to be disregarded.

10. I respectfully agree with the reasoning of the Commissioner in that case and I consider it applies equally to the investment bond with which I am concerned. Although like many people I find it puzzling that the insurance industry should continue to be allowed to dress up as life assurance something which is predominantly a unit trust investment, I am bound to hold that the policy falls within the definition and therefore within the provisions for disregarding its value so long as **one** of the contingencies on which money may be payable under it is dependent on human life. This is a well established principle under the Insurance Companies Acts, from which the definition in reg. 2(1) is borrowed.

11. The point is in my judgment conclusively determined in favour of the claimant by *Gould v. Curtis* [1913] 3 KB 84, where the Court of Appeal held that an

insurance contract under which a small sum was payable on the death of the assured within a certain period, but a larger sum if he was alive at the end of that period, was an "insurance on his life" which enabled him at that time to claim income tax relief for his premiums. The principle of the decision was that the contract was one of insurance on his life even though the principal benefit he hoped to obtain was the payment of a lump sum at the end of a set period, of an amount far more than his executors could have got if he really had died during the period of the insurance. That case in my judgment shows conclusively that the relative size or value of the pure death benefits on the one hand, and the investment benefits on the other, is not a matter that needs to be considered in determining whether a contract falls within the meaning of "life insurance" or not. For those reasons I accept the submission of the adjudication officer that para. 15 of Sch. 10 does apply and I set aside the decision of the tribunal.

12. The principles that in my judgment ought to be applied in cases involving capital assets of this type under the present regulations are as follows:

(1) If an investment bond is written as one or more life assurance policies that contain cashing in rights by way of options for total or partial surrender, then the value of those rights has to be disregarded as a capital asset under para. 15 of Sch. 10, even though they are the most valuable rights conferred by the policy and any element of pure life assurance is peripheral: CIS/122/1991 and paras. 9 to 11 above;

(2) The express provisions for disregarding surrender values under Sch. 10, para. 15 appear to me to be the only reason why the full investment value of a contract like this one, which is immediately obtainable by the policyholder on demand from the life office at any time, has to be left out of account in calculating capital assets for income support. Apart from para. 15, the full realisable value of the contract would be part of a claimant's actual capital, or would be capital available for the asking so that its value could be brought in under reg. 51(2). But the regulations and the schedule have to be read as a whole; and the only way to give practical effect to para. 15 is to exclude surrender values from the reckoning altogether, without having them come back in again under reg. 51(2);

(3) In every case where a person who claims income support turns out to have put a significant amount into one of these bonds, the application of reg. 51(1) must be considered. Because all the significant value of the bond is a surrender value, the money put into it drops out of any calculation of a claimant's actual capital under regs. 45 to 52, which is thus instantly depleted by the amount invested. It is established that this is a "deprivation" of capital to bring reg. 51(1) into operation, so that the amount invested has to be added back in as notional capital if reliance on income support then or later was within the claimant's purpose and contemplation: see case CIS/112/1994, also the decision of a most experienced Commissioner, with which I respectfully concur. With many more families now facing the risk of an elderly relative needing care without this any longer being insured under the National Health Service, and so coming up against the means-tested system for the first time, it needs to be made clear that reg. 51(1) depends on what was actually intended or contemplated at the time of a capital transfer. There is no "safe"

period after which income support may be claimed without the need for inquiry, and it would be most regrettable if the use of such investments were to be seen as a means of "sheltering" assets from the reckoning.

(4) Although the capital investment value of the bond has to be left out of account as a surrender value for the reasons given above, I can see no reason why the subsisting contractual rights to defined monthly sums created by the partial exercise of surrender options under the "withdrawal plan" explained in para. 5 above have to be ignored as well. No part of these payments is readily identifiable as income under the general law, even though unit values no doubt reflect retained income as well as capital growth. In my judgment they represent payments of capital to the policyholder by periodic instalments so long as the withdrawal option arrangement remains in force. It follows that although the capital value of the expected future instalments has to be disregarded under the express provision in para. 16 of Sch. 10, the instalments themselves have to be brought into account under reg. 41 as income of the period for which they are paid, for so long as the total outstanding together with any other capital as valued under the regulations is over £8,000.

Date: 22 January 1997

(signed) Mr. P. L. Howell QC
Commissioner