

## **The complaint**

Mr T and Mrs T, as trustees of the S and D T Trust, complain that Zurich Assurance Ltd delayed in setting up an absolute trust on their whole of life policy and will only pay the surrender value of the policy into a trustee bank account in the name of the joint trustees.

## **What happened**

Mr T and Mrs T have a joint life whole of life policy with Zurich which is written under trust for the benefit of their children. Mr T and Mrs T are joint trustees. In September 2020, Mr T and Mrs T sent Zurich the trust document for this policy, but it was thought to have been lost in the post. Mr T and Mrs T sent a further trust document and the following month Zurich confirmed it had set-up the trust in September. Several weeks later Zurich confirmed the original trust documents had been found.

In February 2021, Mr T and Mrs T called Zurich and requested that the policy be surrendered. Zurich told Mr T and Mrs T that a payment could be made to a trustee bank account held in the name of both trustees or they could send a cheque payable to them both as trustees. Mr T and Mrs T complained to Zurich that they've been unable to open a joint trustee account and that sending a cheque, even by recorded delivery is not secure. Mr T and Mrs T believe the payment should be made to them as trustees and sent to their current bank account.

In respect of the withdrawal Zurich said Mr T and Mrs T aren't the beneficial owners assets within the trust and the terms of the trust make it clear the payment must be to a trustee bank account, or by cheque to the trustees, or payable direct to the beneficiaries.

Mr T and Mrs T were unhappy with the response from Zurich and brought their complaint to the Financial Ombudsman Service. During the investigation Mr T and Mrs T also complained that there had been a delay in setting up the trust. Zurich considered the additional complaint and offered to pay Mr T and Mrs T £50 for the inconvenience of having to contact them and resend the trust document. The Investigator thought this was fair and reasonable and that Zurich had acted reasonably in respect of the surrender value as they were acting in line with the requirement of the trust.

Mr T and Mrs T didn't agree with the Investigator and asked that an Ombudsman decides the complaint.

## **What I've decided – and why**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I understand that Mr T and Mrs T will be disappointed, but for very much the same reasons as the Investigator I won't be asking Zurich to do anything else. I will now explain why.

### *Delay in setting up the trust*

I can see Zurich accepts it could have dealt with the setting up of the trust better than it did, so I don't need to consider what happened here. Instead, I will consider whether the £50 offer it made was fair and reasonable in the circumstances.

In this case the original trust document was sent to Zurich in September 2020. Zurich said it confirmed receipt to Mr T and Mrs T in a letter dated 24 September but now accepts it's likely this confirmation letter wasn't sent. Mr T and Mrs T had to contact Zurich at least twice and provide new documents before Zurich confirmed by letter in early December that the trust was set-up.

I appreciate that Mr T and Mrs T would have been frustrated when Zurich didn't tell them promptly the trust had been setup, and that were inconvenienced by taking other steps to chase up Zurich to ensure it was in place. However, I consider the offer Zurich has since made is a fair and reasonable one. It reflects that the trust was in place and that Mr T and Mrs T were inconvenienced for a relatively short period of time.

### *Surrender payment*

The whole of life policy was written under trust in 2020. This means that any benefits accrued within the policy, including the surrender value, are no longer owned by Mr T and Mrs T. The policy benefits are for their named children and can only be paid to the trustees or the beneficiaries. In this case I understand Mr T and Mrs T as trustees of the S and D T Trust have told Zurich they don't want the surrender value paid to the beneficiaries.

I've listened to the telephone calls Mr T and Mrs T had with Zurich when they first called about surrendering the policy. Zurich explained that the surrender value could only be paid into an account held by the joint trustees or sent by cheque payable to the joint trustees. Zurich clarified that the cheque would be payable to Mr T and Mrs T as trustees of the S and D Trust. Mr T and Mrs T decided that it wasn't secure enough for Zurich to send a cheque, but they've now been unable to open a trustee bank account for the surrender value to be paid into. Mr T and Mrs T think Zurich has acted unfairly.

The terms of the Absolute Trust Mr T and Mrs T used state the trust should not be used if, *"you want to retain any of the policy benefits for yourself"* and states, *"you cannot benefit from the trust at any time."* The same document also explained to Mr T and Mrs T that, *"The trustees will be in control of the operation of the trust. As Zurich will make payment to all the trustees, they may need to set up a trustee bank account."*

When they completed the withdrawal form, Mr T and Mrs T requested that the funds be paid to the trustees. Immediately above the request box they ticked the form explains two important aspects they would need to consider:

*"The payment must be made to the trustees jointly or to the named beneficiary(ies).*

*If the payment is to be made to the trustees jointly but you do not have a trustee bank account, we recommend you contact your bank now to arrange this. The bank account must be in the name of all trustees."*

I can't tell Zurich what processes they should put in place to ensure the intentions of the trust are met, that is a matter for their regulator the Financial Conduct Authority. But I can decide whether Zurich made it clear to Mr T and Mrs T as trustees of the S and D T Trust how they would ensure payments from the policy met the intentions of the trust. In my opinion, Zurich did this before the trust was set-up, and again when the requests were made to surrender the policy. The trustees can surrender the policy, but Zurich made it clear how it would deal with withdrawals and I don't consider they acted unfairly by following its processes to ensure

the intentions of the trust were met.

I appreciate that Mr T and Mrs T haven't been able to open a trustee bank account with their own bank and that this may be frustrating for them. But this doesn't make the actions of Zurich unfair. I also seen that Zurich offered to pay the beneficiaries the surrender value in accordance with the apportionment contained within the trust, but Mr T and Mrs T rejected this offer, along with an offer to make a payment by cheque to the trustees of the S and D T Trust. So, taking into account all of the circumstances surrounding the withdrawal request, I've decided that Zurich didn't act unfairly when it followed the procedures it said it would follow to protect the intention of the trust.

### **My final decision**

I've decided that Zurich Assurance Ltd should pay Mr T and Mrs T the sum of £50 to reflect the inconvenience caused to them as trustees of the S and D T Trust when it didn't tell them promptly the trust had been set-up.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T and Mrs T as trustees of the S and D T Trust to accept or reject my decision before 30 November 2022.

Paul Lawton  
**Ombudsman**