

The complaint

Mrs L complains that HL Partnership Limited (“HLP”) didn’t sell her and her late husband the joint life assurance policy they asked for. She’s explained she has lost out as a result.

What happened

Mr and Mrs L were advised by HLP to take out a new joint life assurance policy when they increased their mortgage borrowing in 2017. It was set up with an initial sum assured of £284,793 which reduced in line with their mortgage and point of sale documents point out it was to cover *“the mortgage should either of you die during the 30 year term”*.

Mr L sadly passed away in 2020. When Mrs L went to claim on the policy to pay off the mortgage she was told that she wasn’t a joint policy holder. This meant that the policy proceeds had to go to Mr L’s estate and she needed to get a Grant of Probate before the policy could pay out. Mrs L has explained that because the money was paid into the estate, she ended up receiving less than the full amount, meaning there was a shortfall as Mr L had debts that needed to be settled.

HLP initially said that it felt there were system issues and it contacted the policy provider about this. HLP said it was clear that the intention was for both Mr L and Mrs L to be joint policyholders. HLP said to the provider that it wasn’t clearly set out that it was only Mr L that was the policyholder. The policy provider explained it set the policy up in line with the application it had received from HLP.

HLP then said to Mrs L that there was likely a contract formed between herself and Mr L when taking out the policy which means that the mortgage should’ve been paid off with the funds. It said that it sent the relevant paperwork and it wasn’t responsible for the situation she is now in.

I sent my first provisional decision on 22 July 2022 and my second provisional decision, with amended redress, on 2 September 2022. For clarity, the relevant extracts are below:

Relevant extract from first provisional decision:

“I’ve reached a different outcome to our Investigator and I’ll explain why below. I first want to set out that this is a complaint from Mrs L – an individual and customer of HLP. I’m not a probate lawyer and this complaint isn’t from the estate of the late Mr L. My role here is to determine what is fair and reasonable in this complaint. It’s not disputed that because of the way the policy was set up, the life assurance money went through Mr L’s estate and Mrs L has ended up being entitled to less. So, my role is to determine whether HLP is responsible for the shortfall.

What should’ve happened

It’s clear to me that Mr and Mrs L wanted joint life cover. That is, a policy that pays out to the other if one of them should die. In this case, Mr L sadly passed away, and I offer my sincere condolences to Mrs L for her loss.

Had the policy been set up correctly, the policy should've paid out to Mrs L directly within a month of when she made a claim. She would've had the total claim value which was in excess of £276,000 at the time Mr L passed away. At this point she'd have repaid her mortgage - which had a balance of around £265,000 - and have a small amount left over for her to use to support herself and her children.

What happened

The policy HLP sold was a policy with both Mr L and Mrs L as lives assured and it would pay out on first death which was what was needed. However, it was written that only Mr L was the policy owner. There was no beneficiary under that policy and it wasn't written into trust - likely because of HLP's own misunderstanding of the policy as it has said that it believed it to be a joint policy.

What this meant is that when Mr L passed away, the policy provider would only pay out to the legal representative of his estate. So, Mrs L had to get a Grant of Probate. Once this was obtained, the funds were released.

As the funds were paid out to Mrs L, as executor of the estate of her late husband, there were other liabilities to cover with the funds. Mrs L has provided accounts to show that she is entitled to, as beneficiary of her late husband's estate, £231,370.38.

I've seen arguments from both parties around the way the estate was settled, but this isn't something I'm looking into. This isn't a complaint from the estate and it's not within my remit to determine which creditors should be paid out of any money within an estate. What I can see is that Mr and Mrs L asked for a policy to protect them in this exact scenario, to ensure they could repay the mortgage. They paid premiums to ensure this would happen but it didn't happen. The money was paid to the estate – so regardless of how the estate is set up, Mrs L wasn't then entitled to the amount she would've been had the policy have been set up in the way it was intended.

Is HLP at fault?

I've thought carefully about how the policy was set up. I can see that HLP obtained a few similar, almost identical quotes from the policy provider at the time. On some of these quotes both Mr and Mrs L are policy owners, in other quotes it's only Mr L that is the policy owner. I don't know why the different quotes were generated and it could be because of the "system issues" HLP talk about – despite the policy provider denying any issues at the time. But in any event, I can see that all correspondence was addressed to both Mr and Mrs L and the policy they were sold appeared to be a joint policy. But looking in the detail you can see the policy owner was only Mr L.

I can understand how a lay person would miss the detail here, so whilst I understand Mrs L had received all of the copies of the information and accepted the cover on that basis, it's clear that HLP had told her this was a joint policy. In fact HLP say they asked the product provider why Mr L was the policy owner and it said it was set up for him to be the point of contact. The product provider doesn't have a record of this conversation. And, in any event, I'd expect HLP to have obtained something in writing to confirm how the policy was set up if it had doubts.

It was HLP who sold Mr and Mrs L this policy, it was the expert in these matters and the policy wasn't set up in the way Mr and Mrs L asked for, or what they were told they had. Because of this, I agree with the Investigator that HLP is at fault.

Has Mrs L lost out?

Mrs L has sent details of the estate accounts. She's shown us the mortgage amount, when she was able to pay it and how much she's actually due under the estate as beneficiary. I've thought about the fact Mrs L has repaid her mortgage. She's explained she did this with the life assurance pay-out after receiving advice, so she could mitigate her losses and ensure her house was safe for her and her children. But just because the mortgage has been paid, doesn't mean she hasn't suffered a loss because of the error.

The very detailed accounts that Mrs L has submitted, which I'm satisfied have been prepared and finalised by a qualified professional, show that the balance due to her is £231,370.38. As she made mortgage repayments and then eventually discharged the mortgage for around £260,000, she has a shortfall to make up from what she was actually due.

It's also worth noting that Mrs L should've received the full policy value at the time Mr L passed away – which is more than the full mortgage liability at the time. So, I think it's right that this is the position Mrs L is put in.

I'm mindful that the policy did, in fact, pay out in full. And I've thought about whether asking HLP to pay anything further would be betterment – Mrs L is the sole beneficiary of Mr L's estate anyway. But, had HLP sold Mr and Mrs L the correct policy – with joint policyholders – the money wouldn't have passed through the estate. And because of this, Mrs L hasn't been entitled to the full value of the policy in the same way that she would've been had she been joint policyholder.

I'm keen to draw a distinction here between Mrs L as an individual who should've been a joint policy holder and Mrs L acting as legal representative of the estate of the late Mr L. Any issues that have arisen for the estate due to the payment of the policy hasn't been considered here. That includes any potential estate debts that were payable as a result, and any of the estate assets that have changed. This decision focuses on what Mrs L should've received directly under the policy, and what she was actually due personally because the policy paid out to the estate. Any dispute as to the order the estate has been settled falls outside of this complaint."

Relevant extract from second provisional decision

"Further considerations

The basis of my decision remains the same and I'm upholding this complaint. The only changes based on the responses from both parties is the redress.

I've already accepted that the additional interest Mrs L paid on her mortgage, before she received the Grant of Probate and the policy paid out, should be refunded with interest. So, the only remaining issue is HLP's responses.

Firstly, I had already acknowledged in my provisional decision that this decision is about the loss Mrs L has suffered, as she was supposed to be joint policyholder but wasn't due to the error made by HLP. The legal argument about the order the estate was settled is complex and falls outside of the scope of this decision. The estate accounts have been finalised and prepared by a qualified professional and I won't be commenting on the way the estate debts were settled. It's clear that Mrs L should've had the policy funds paid directly to her but for HLP's error. So, I'm using the evidence submitted to determine how Mrs L has lost out as a result.

I do accept, however, that there are some expenses in the accounts that Mrs L has submitted that would always be payable. The funeral and headstone being one of them, which would've been payable regardless of whether the estate had money. This expense falls under the heading "administration expenses" in the accounts we've seen. So, it wouldn't be right for HLP to have to cover this cost and it should be deducted from the redress it pays. So, I turn to the other costs under the same heading. These total £15,679.70 (inclusive of the funeral costs).

Around half of these costs have been labelled as "legal and professional fees" and these mostly relate to the sale of the estate's share in Mr L's business. I understand that this was undertaken to discharge the personal guarantee that Mr L had made.

Mrs L's representative has provided comprehensive reasons and evidence to explain that she believes none of this would've been paid had the policy paid out to Mrs L directly. She's referenced the need to have the personal guarantee removed only because the estate wasn't insolvent, as well as the Grant of Probate only being sought to get the policy funds.

It's very difficult, without commenting on how the estate was wound up, for me to conclude what costs would and wouldn't have been incurred. Winding up an estate is complex, particularly when Mr L was a business owner with a number of liabilities relating to the business that he'd personally taken. Many of the scenarios are, at this point, hypothetical. I agree that Mrs L has lost out, and she hasn't received what she should have. But I think it's too speculative to say that the legal and professional fees encountered when dealing with Mr L's share in the business, as well as general probate costs, wouldn't have been payable.

I have seen reference to Mrs L always intending to sell Mr L's share in the business, it was hoped that she would receive more than she did and that may have covered some of the "administration expenses". But we can't be sure of this. The administration and legal costs paid were mostly incurred due to selling the business and dealing with the creditors and personal guarantee. Whilst an insolvent estate may have negated the personal guarantee, I'm not persuaded that Mrs L wouldn't have needed to have met the costs to ensure this was the case and to sell the estate's share of the business.

As such, I think it would be fair and reasonable to deduct these costs from the overall redress.

Putting things right

Mrs L has shared the accounts with HLP. These haven't gone into detail about the specific costs under the administration expenses, but as I've said above, I do think this would likely have been paid out regardless.

HLP must put Mrs L in the position she'd have been in had the policy been set up correctly. Mrs L would've received the policy surrender value within a month of Mr L's death. It should compare this to the actual value Mrs L is legally entitled to under the estate and pay her the difference less the administration expenses of £15,679.70.

As this amount would've always been there to repay the mortgage, I won't be asking HLP to add interest to the majority of this amount. And I believe the excess may have been used for those administration expenses that I'm not persuaded wouldn't have been due during the winding up of the estate. So, I don't think it would be reasonable to ask HLP to pay interest on this amount.

As Mrs L wouldn't have incurred the interest on the mortgage whilst waiting for the Grant of Probate, this interest should be refunded to her for the period of the delay. This is from 6

June 2020 (one month after the death certificate was issued) to 19 January 2021 (when the mortgage was repaid). To this amount, HLP should pay 8% simple interest per annum from the date each payment was made to the date of settlement.

I've also seen that this issue has caused Mrs L significant trouble and upset. It's important to note that the situation would've always been distressing, but HLP's error has made a very upsetting situation more stressful. Mrs L had to wait for the policy payout and has had to continue to worry about being able to keep her home. For this, HLP should pay her £750 compensation."

Responses to my provisional decision

HLP didn't respond to my second provisional decision. Mrs L disagreed. Her representative sent in a very detailed response, with appendices, outlining why the funeral expenses and legal costs shouldn't be deducted from the redress. The detailed response concluded that the original redress in the first provisional decision is the right one.

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 want to assure Mrs L I've considered the response carefully and I do understand the position she believes she'd be in. But, my decision remains the same.

I'm grateful to Mrs L and her representative for providing such detailed information and hypothetical calculations. But I've already said that winding up an estate is complex, and it's not my role to comment on exactly what would've happened to Mr L's estate had the policy been paid directly to Mrs L. The Financial Ombudsman Service is an informal alternative to court, and my role is to reach an outcome that is fair and reasonable. It's not my role to play a forensic accountant, nor a probate lawyer. So, whilst I appreciate the level of detail Mrs L's representative has provided, it is too speculative and complex to say with any certainty what situation Mrs L would've been in.

I am sure that the policy ought to have been paid to her directly. And I'm satisfied she's not going to receive the full benefit of the policy. When determining what HLP should pay Mrs L I've used the accounts submitted by Mrs L. But I'm still of the opinion that Mrs L would've had to pay out some costs. I appreciate Mrs L has said these would be minimal and not the actual costs the estate paid for the funeral and the legal costs, but I can't be sure that's the case. Mrs L's argument is based on something that hasn't actually happened – the estate isn't insolvent. And Mr L did leave a business that Mrs L intended on selling, so costs would've always been incurred for this. I appreciate that Mrs L believes she'd have gained a benefit from this if the estate was insolvent due to loans and guarantees but I can't be sure this is the case. As I need to reach an outcome based on what's fair and reasonable, I simply don't think it's fair to ask HLP to pay for costs that were likely always payable.

The issues at play here are complex, and I've already explained that I don't intend to talk about how the estate was settled because that isn't within my remit. Mrs L is asking me to accept her evidence as fact when it is based on something that didn't happen – the policy being paid out to her directly. Which means the arguments she's made, including the "base scenario" she refers to are hypothetical. Because of this, there isn't enough for me to say it's fair for HLP to pay for the costs incurred for Mr L's funeral or the sale of his business assets – as it's likely these would've been incurred all along by Mrs L.

I do understand Mrs L will be disappointed by this decision, but she is free to reject the decision and pursue the matter in court if she wishes.

Putting things right

Mrs L has shared the accounts with HLP. These haven't gone into detail about the specific costs under the administration expenses, but as I've said above, I do think this would likely have been paid out regardless.

HLP must put Mrs L in the position she'd have been in had the policy been set up correctly. Mrs L would've received the policy surrender value within a month of Mr L's death. It should compare this (policy value as at 1 June 2020 being one month after Mr L's death) to the actual value Mrs L is legally entitled to under the estate (as per accounts sent to HLP) and pay her the difference less the administration expenses of £15,679.70.

As this amount would've always been there to repay the mortgage, I won't be asking HLP to add interest to this amount. And I believe any excess may have been used for those administration expenses that I'm not persuaded wouldn't have been due during the winding up of the estate and payable by Mrs L herself. So, I don't think it would be reasonable to ask HLP to pay interest on this amount.

As Mrs L wouldn't have incurred the interest on the mortgage whilst waiting for the Grant of Probate, this interest should be refunded to her for the period of the delay. This is from 6 June 2020 (one month after the death certificate was issued) to 19 January 2021 (when the mortgage was repaid). To this amount, HLP should pay 8% simple interest* per annum from the date each payment was made to the date of settlement.

*If HLP considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mrs L how much it's taken off. It should also give Mrs L a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

I've also seen that this issue has caused Mrs L significant trouble and upset. It's important to note that the situation would've always been distressing, but HLP's error has made a very upsetting situation more stressful. Mrs L had to wait for the policy payout and has had to continue to worry about being able to keep her home. For this, HLP should pay her £750 compensation.

My final decision

I uphold this complaint. I direct HL Partnership Limited to follow the instructions I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs L to accept or reject my decision before 8 November 2022.

Charlotte Wilson
Ombudsman