

The complaint

Mr C complains that the life assurance policy he was advised to start by HSBC UK Bank Plc (HSBC) was mis-sold. This was because he wasn't informed about the consequences of the trust it was placed in. He was unaware of the 'hassle' he could face if he lost contact with a trustee, as has happened. Mr C wants to surrender the policy; however, he is unable to do this as he cannot contact one of the trustees.

What happened

Mr C started a whole-of-life assurance policy in April 2001. The monthly premium for this was £25 and it provided life cover of £7,130. The policy was placed in trust with Mr C's three sons as trustees. The beneficiaries were Mr C's spouse and his sons.

Mr C has explained that he has become estranged from one of his sons and they are no longer in contact. Because of this, he doesn't want this son to continue to be a trustee. In 2018 Mr C enquired about removing his son as a trustee. But this wasn't possible as all the trustees would need to agree to it. And Mr C doesn't think this can happen due to his estranged son still being a trustee.

Mr C doesn't think this is right and has complained to HSBC. HSBC has considered Mr C's complaint, but it didn't uphold it. HSBC said that it may not have gone through the trust process in detail with Mr C, but it did provide documents that informed him that the trustees would be the legal owners of the policy. And that it thinks the policy and the trust met Mr C's aims at the time.

Mr C didn't agree, and he brought his complaint to the Financial Ombudsman Service. HSBC initially said that it thought that Mr C hadn't complained in time. As he raised some concerns about his son being a trustee in 2018, then he should have been aware that he could complain about this issue then. So, he was likely to be outside of the time limits for bringing a complaint to the Financial Ombudsman Service.

One of our Investigators considered the jurisdiction issue that HSBC had raised. He thought that it was one we could consider. HSBC has subsequently given consent for this service to consider the complaint. So, it is now within the jurisdiction of the Financial Ombudsman Service.

Our Investigator then looked at the merits of the complaint and initially upheld it. He thought the policy was suitable for Mr C. He also thought that the trust was appropriate given that he wanted the sum assured to pass to his beneficiaries on his death before probate. And Mr C was informed about the nature of the trust, and that he would no longer be the policy owner.

But he said it wasn't clear from the documentation that Mr C's son had applied to be a trustee. And so, he thought HSBC should assist with Mr C in removing him as a trustee.

In response HSBC provided evidence that showed Mr C completed the trust form naming his sons as trustees. HSBC said that Mr C's son could be removed as a trustee under Section 36 of the Trustee Act. The beneficiaries of the policy could also be changed but this could

lead to complications within the policy itself, and with some aspects of the taxation of it. But it recommended that Mr C seek professional advice about this situation, given the complexities of it.

Our Investigator considered the complaint then decided that it shouldn't be upheld. He still thought that the advice HSBC gave to Mr C was suitable for him. And he didn't think it was unsuitable advice for HSBC to place the policy in trust as this met Mr C's needs and objectives for the policy proceeds to go straight to the beneficiaries before probate was completed.

Mr C didn't accept the Investigators opinion. He didn't dispute that the policy was suitable for him. But he said it was not explained to him that the effect of the trust would lead to the control of the policy being taken from him as a policyholder and that he couldn't make any future changes to it. He said the policy is in limbo and doesn't think this is right given he pays the premiums. Mr C has said the way the trust is set up jeopardises the money he has put aside for his funeral costs.

HSBC has said that Mr C may be able to replace the trustee if the trustee is unwilling or unable to act. And Mr C's son will only receive payment if all the other trustees agree to this, or the monies are left in trust after 80 years. It reiterated that it thinks the advice to start the policy and place it in trust was suitable for Mr C. And he was given information about the trust at the time of sale. But again, it said that Mr C should get advice about this situation.

As no agreement has been reached the complaint has been passed to me to issue a final decision.

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.

Our Investigator said that the policy was suitable for Mr C to start to protect his close family. And Mr C has said that he doesn't disagree with this.

I won't detail all the information that HSBC recorded about Mr C's circumstances as everyone involved here is familiar with it. But for the avoidance of doubt this policy was started by Mr C to provide a lump sum for his wife and children on his death. He says to provide for his funeral costs. Both HSBC and our Investigator think that the policy is suitable for this purpose and setting up his wife and children as the beneficiaries was also right.

Taking everything into consideration, I also think that this policy was suitable for Mr C and met his needs at the time. Mr C was also provided with full documentation about the policy itself. And given the correspondence I've seen from the time of sale, I think it was explained to him.

The policy was placed in trust with Mr C's three sons as trustees. This was so that on his death the money it provided would fall outside of Mr C's estate and could be distributed to the beneficiaries relatively quickly. Mr C says this could be used to pay for his funeral.

It is relatively common for a policy such as this to be placed in this kind of trust for this reason. And given that the policies aim was to provide life cover, and who it was intended to benefit, I don't think it was unsuitable for HSBC to have advised Mr C to do this here. Its purpose was to ensure that Mr C's beneficiaries would receive the proceeds in a straightforward way and at the time of sale this was a reasonable way to do this.

And I've gone on to look at the documentation that HSBC provided, and it does explain how the trust will work. The documentation does say that the trustees '*... hold the Trust Fund for the benefit of the people identified [in schedule A] ...*'. And confirms that the trustees are the owners of the policy. HSBC has provided file notes to show that this was explained to Mr C at the time of sale and again in 2018.

Again, overall, I am persuaded that Mr C was been provided with reasonable information about the trust. He was informed that he essentially wouldn't be the owner of the policy going forward and he wouldn't be able to make changes to the trust.

So, having considered all of the evidence I've seen I don't think that HSBC mis-sold the policy. Or that it placed it in a trust incorrectly. Mr C was provided with reasonable information about the trust and the policy.

At the heart of this dispute is Mr C's relationship with his son. I don't have complete information about this, but Mr C has said that this has broken down and he no longer trusts his son to act prudently in respect of any money he may receive from the policy. They are no longer in contact. I can see why this would cause a problem. I do sympathise with Mr C, this must be a difficult time for him and his family.

But this doesn't mean I can uphold the complaint. The problems Mr C is now facing weren't known at the time the policy and trust were started. I also don't think they were reasonably foreseeable. So, HSBC didn't need to 'factor them in' to the original advice.

Of course, problems like this do occur from time to time. But it doesn't mean that HSBC could, or should, become involved in putting this right. This is really an issue that Mr C, and the appropriate members of his family and policy trustees are best placed to resolve. After taking whatever advice or representation they may need.

Putting it another way, I don't think this dispute would have arisen if Mr C's relationship hadn't become problematic with his son. And I don't think it's reasonable to say that these problems were caused by any action or inaction of HSBC. So, I don't think it has done anything wrong here.

Taking all of this into consideration I'm not upholding Mr C's complaint. I'm sure this will be a disappointment to him, and I hope he is able to rectify this situation.

My final decision

For the reasons set out above, I don't uphold Mr C's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 29 February 2024.

Andy Burlinson
Ombudsman