

The complaint

Mr and Mrs H complain that Chalfont Investment Consultants Limited ('Chalfont') failed to write the whole of life policy they took in trust to mitigate an inheritance tax ('IHT') liability. They say they've suffered a loss as a result, because they've been paying for a policy that effectively had a lower level of cover – had they died, the pay out to their estate would've been reduced by IHT.

What happened

The following is a brief outline of the background and circumstances leading up to this complaint.

In 2008, Mr and Mrs H took out a whole of life policy with Chalfont. The purpose of the policy was to mitigate a future IHT liability. Chalfont says the application form noted that the policy should be written under trust.

In 2023, Mr and Mrs H say that following a review of their IHT planning, they discovered the policy had not been written in trust as intended, so in July 2023 they complained to Chalfont. They said Chalfont's oversight would have cost their estate a significant sum of money had they both died. They said Chalfont were paid a commission for something they didn't do, which could've had serious financial repercussions.

In August 2023, Chalfont formally responded to the complaint. It said it sent Mr and Mrs H a letter on 14 May 2009 with the policy documentation, which had a handwritten note within the body of the letter saying the trust form was enclosed with instructions on what they needed to complete. It said in response to Mr and Mrs H's assertion that the handwritten note was recently added, there was no evidence to suggest it wasn't genuine. It said it had found no evidence that it chased Mr and Mrs H for the outstanding trust form or that they were reminded it was outstanding. It said while it understood Mr and Mrs H were dissatisfied that it hadn't followed things up and that had the policy paid out the sum would've been paid to their estate, it said there was no financial loss. It said it had received Mr and Mrs H's completed trust form which had been sent for processing and it said it would make a goodwill payment of £100 for the inconvenience caused.

Mr and Mrs H referred their complaint to us. They said they have no trace of the letter Chalfont says it sent them in May 2009. They said Chalfont initially told them the failure to set up the trust was an oversight and then they found the letter from May 2009. They said Chalfont made no attempt to chase them for the missing form.

They disputed Chalfont's claim that they'd not suffered a loss because they said they'd spent 14 years paying for a policy that wouldn't have provided the amount of cover they needed because IHT would've effectively reduced it.

One of our Investigators looked at the complaint and said Chalfont didn't need to do anything more to put things right. They said they thought Chalfont had sent the letter with the trust

form in May 2009. And while Mr H said he didn't receive the letter, they said they hadn't seen anything to indicate that Mr and Mrs H had followed things up to see if the trust was in place until they complained. They said the premiums Mr and Mrs paid were for the policy and not the trust, so there was no evidence they'd paid for a product they didn't receive.

Mr and Mrs H disagreed. In summary they said, Chalfont sold them IHT protection but that's not what they got. They said Chalfont charged them for getting things wrong. They disagreed that it was their responsibility to chase things up – they didn't know what needed doing. They said Chalfont should've chased them for a reply. They also repeated the point that Chalfont's initial answer was that the failure to set up the trust was an oversight on its part before conveniently finding the letter from May 2009.

The Investigator wasn't persuaded to change their opinion. They broadly repeated their findings and said there was no evidence to suggest Chalfont's letter of May 2009 wasn't genuine. Mr and Mrs H also broadly repeated the points they made. Because things couldn't be resolved informally, the complaint was referred for 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.

Having done so, while I know this will be disappointing for Mr and Mrs H, I've decided to not uphold their complaint. I'll explain why.

It's not disputed that the reason Mr and Mrs H took out their whole of life policy with Chalfont in 2009 was for the purpose of IHT planning. And this meant the policy should've been written in trust. Unfortunately, this didn't happen.

Chalfont says it sent Mr and Mrs H a letter dated 14 May 2009 in which it enclosed the necessary form for them to complete and return to enable the policy to be written in trust, a copy of which it has provided. Mr and Mrs H say they didn't receive it. They've also questioned the authenticity of this letter. They say this is because when they first enquired about things, Chalfont said the trust hadn't been set up because of an oversight on its part. It wasn't until they complained that they found a copy of the letter.

It seems to me Chalfont's comment about an oversight on its part was made before it looked further into Mr and Mrs H's query or complaint. I've seen nothing which leads me to question the genuineness of the May 2009 letter. And while the reference to the enclosed trust form in the letter is handwritten, whereas the main body of the letter is typed, I don't think this is enough evidence to demonstrate that this was not from the time. So, I think Chalfont likely sent this letter and that it contained the form Mr and Mrs H needed to complete for the policy to be written in trust.

Most letters if correctly addressed are safely received. But I accept it's possible Mr and Mrs H didn't receive it. Although uncommon, things occasionally go missing in the post. Mr and Mrs H have said that Chalfont should've followed things up when they didn't receive the form back from them. And Chalfont doesn't dispute that it didn't do this or send Mr and Mrs H a reminder about the outstanding paperwork.

I can see the Investigator said that there was no evidence that Mr and Mrs H had followed up to check whether the trust was in place. But, like Mr and Mrs H, I don't think they would've reasonably understood that they needed to. In any event, whether Chalfont should have proactively followed things up or not, isn't in my view crucial to the outcome of this complaint. This is because, even if I found that Chalfont ought reasonably to have chased up

receipt of the trust form, ultimately, and despite what Mr and Mrs H have said, they've not suffered a financial loss here. My role is not to fine or punish a business for any wrong doing – it's to determine if any wrong doing has led to a consumer suffering a loss, which needs putting right.

Mr and Mrs H are right that, if they had both died between the policy's inception in 2009 and when they discovered the policy wasn't in trust in 2023, the financial consequences to their estate would've been significant given the sums they've quoted. But this didn't happen and the policy remains in force.

I can understand why Mr and Mrs H feel they've paid for a policy over 14 years that hasn't given them what was intended or what they asked for, and that they have lost out because of this. But importantly, from what I can see, the policy itself is what Mr and Mrs H asked for and what Chalfont advised them to take out and got paid commission for – i.e. a second death whole of life policy for a sum assured as they requested. So, they've been paying the premiums for the right product. And if things had happened as they should have, this wouldn't have changed. What went wrong is that the policy wasn't written in trust. But, because no claim was made on the policy creating an increased liability to IHT, and the policy remains in force, Mr and Mrs H haven't lost out as a result of any wrong doing by Chalfont.

Fortunately, the situation can be easily rectified and I can see that Chalfont has already asked Mr and Mrs H to complete the required trust form, and I understand the policy has now been, or is in the process of being, written in trust with the policy provider. So, this puts Mr and Mrs H in the position they should've been from the outset. I can see Chalfont has also paid Mr and Mrs H £100 for the inconvenience the matter has caused. So, I'm satisfied there is nothing more Chalfont needs to do to resolve things.

For these reasons, I don't uphold this complaint.

My final decision

For the reasons above, I've decided to not uphold this complaint – so I make no award in Mr and Mrs H's favour.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H and Mr H to accept or reject my decision before 21 March 2024.

Paul Featherstone
Ombudsman