

The complaint

Mrs S, and the estate of Mr S, complain about the whole of life plan Mr and Mrs S started with St James's Place Wealth Management Plc ('SJP'). Mrs S says that she wanted to surrender the policy and receive the current value of it herself. But she cannot do this as SJP says the policy is in trust. Mrs S doesn't think this is correct as no party to the complaint has been able to produce the trust documentation. Mrs S thinks the policy was mis-sold due to this.

What happened

Mr and Mrs S started an Estate Creation Plan in July 2003. SJP advised them to do this. This was a whole-of-life policy that was designed to pay a sum when both policyholder's have died. This could be used to pay any expenses on their death. The sum assured was £66,989 with an initial annual premium of £120.

SJP says the policy was placed into a Variable Trust dated 2 March 2003. As the policy was written in trust then it would fall outside of their estate and the benefits could be paid immediately to the trusts beneficiaries. No party to the complaint has been able to provide a copy of this initial trust.

In July 2004 the trust was altered. Mr and Mrs S, the original trustees and settlors were joined by Mr A and Ms L as trustees (which I understand was their children). I've seen the deed of appointment for the additional trustees that confirms this. This deed of appointment referred to the trust completed in March 2003.

Mr S died in 2012 leaving Mrs S as the remaining settlor in the trust and the sole policy owner.

In October 2021, Mrs S asked to surrender the plan and have the proceeds paid to her. She has said that she didn't want to continue to pay the premiums as they were too expensive, and she wanted the value of the policy paid to her.

In January 2022, SJP told Mrs S that as the policy was written in trust then the proceeds must be paid to the beneficiaries or into a trustee bank account. I've read all the correspondence that took place about this issue in 2021 and 2022. I won't detail all of it here as the position did not materially change from SJP maintaining the policy was subject to a trust and Mrs S disagreeing with this.

Mrs S has complained to SJP about this on the basis that as the original trust documents cannot be located, then there cannot be a trust. So, as she has paid the premiums then she should be able to receive the funds herself. She said she was misled when the policy was set up as she cannot now surrender it.

SJP has considered the complaint and has upheld it in part. It said the policy schedule confirmed that the benefits would be payable to a variable trust which was set up on 2 March 2003 and was then altered in 2004. So, it was confident that the policy was placed in trust and it had to legally pay the proceeds to the beneficiaries. And the advice to do this

was suitable for Mr and Mrs S. The trustees could distribute the death benefits on the second death to the beneficiaries of the trust. SJP made an offer to pay £250 compensation due to the delays that were present in the complaint handling.

Mrs S didn't agree with SJP's proposed resolution to this complaint.

One of our Investigators considered the complaint but didn't think that it should be upheld. He said that it's likely that the policy was in trust as this is mentioned in the original plan documents and the trust was varied in 2004. So SJP hadn't acted unfairly when it said the policy was in trust and it could only pay the proceeds to the beneficiaries of the trust. He didn't think the policy was mis-sold. He thought the offer SJP had made of £250 for the complaint handling was fair.

Mrs S didn't agree, and she said it was important that no trust documents existed and so it wasn't likely a trust existed.

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.

Mrs S has said that the Estate Creation Plan was mis-sold. But she seems to have said this due to the later events that surrounded the problems with the trust. Mrs S has not said that her and the late Mr S didn't want, at the time of sale, to provide a lump sum on the second death of her or Mr S. And she's given no indication that she thinks the policy is otherwise unsuitable to do this. So, I'm not upholding her complaint that the policy was mis-sold.

Mrs S' complaint concerns the trust that SJP says the policy is subject to. As has been established the original trust document is no longer available, both the trustees and SJP do not have a copy of this. As a starting point it would have been better if SJP did have a copy. But the trust is the responsibility of the trustees and so I would have, primarily, expected the trustees to have this documentation.

In the absence of the original trust document, I've considered if a trust was likely to have been in place. And if SJP was right to have acted the way it did in respect of the policy surrender that Mrs S wanted to make.

As I've said above the point-of-sale documentation does refer to the policy being placed in trust. And this trust was amended in 2004. The deed of appointment in 2004 also refers to a trust that was started in 2003.

I don't think it's likely that Mr and Mrs S would have agreed to add trustees to a trust that they didn't think existed in 2004. And the 2004 amendment does clearly show who the settlors and trustees are. So, I think it's more likely than not that a trust was agreed in 2003.

So, it follows that I don't think SJP was acting incorrectly when it said that it couldn't pay the proceeds to Mrs S herself as the policy proceeds needed to be paid to the beneficiaries. It also wasn't acting incorrectly when it informed Mrs S of what she needed to do.

I also think that SJP acted reasonably when it gave Mrs S information about this and how the policy could be surrendered. Either by a payment to the beneficiaries or otherwise. And it would have been acting incorrectly if it had paid the proceeds directly to Mrs S.

Overall, I'm not upholding Mrs S' and the estate of Mr S' complaint about the trust and how this affected Mrs S' request to surrender the policy.

I do agree that SJP could have considered this complaint in a timelier manner. And this has clearly caused Mrs S some distress and inconvenience. But I think the £250 it has offered for this is reasonable.

My final decision

St James's Place Wealth Management Plc has already made an offer to pay £250 to settle the complaint and I think this offer is fair in all the circumstances. So, my decision is that St James's Place Wealth Management Plc should pay £250.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S and the estate of Mr S to accept or reject my decision before 19 September 2024.

Andy Burlinson
Ombudsman