

The complaint

The administrators of the estate of Mr H have complained that The Royal London Mutual Insurance Society Limited, trading as Scottish Provident ('Scottish Provident') incorrectly told their late father his life insurance policy was set up in trust. As a result, Mr H's estate has incurred unnecessary inheritance tax ('IHT') and other costs.

The administrators are the late Mr H's children. For ease of reading, in my decision I shall refer to the late Mr H as 'Mr H2' and his son and daughter as 'Mr H1' and 'Ms H'.

What happened

In 2001 Mr H2 set up a life insurance policy with Scottish Provident in a Flexible Business Trust. Mr H2 was settlor and trustee. Mr H2's fellow trustee was his business partner who I shall refer to as 'Mr D' in my decision. In 2011 Mr H2 had to retire because of ill health and sold his business and as part of that, the life assurance policy was assigned to him.

Later that year, Scottish Provident misinformed Mr H2 the policy was in trust when this wasn't the case.

After the death of Mr H2 in 2019, Mr D represented himself as being trustee and beneficiary of the policy when this wasn't the case.

As a result of the life insurance policy not being held in trust, the estate had to pay inheritance tax of £266,364.79. It also incurred legal fees of £7,752 and because of a waiver agreement signed, the executors couldn't pursue £198,266.28 Mr H2 was owed from the sale of the business plus £118,266.28 in Late Payment Interest ('LPI').

To put the matter right Mr H1 and Ms H wanted the minimum sum of £359,436.52 and complained to Scottish Provident in September 2023. In its response Scottish Provident said;

- IHT was payable as the policy wasn't in trust and there hadn't been requests from Mr H2 to set up a new trust.
- It had incorrectly provided Mr D with a claim pack in 2019 when he initiated the claim as it had failed to recognise the policy was no longer in trust. This delayed the claim being paid until 18 December 2020.
- It offered to pay LPI of £33,587.97 net, plus £1,000 for the distress and inconvenience. But it hadn't seen evidence the legal fees of around £8,000 were as a direct result of its error.
- It said it wasn't unreasonable to have expected Mr D to have confirmed to Mr H1 and Ms H that the policy was no longer in trust and had been assigned to Mr H2 as Mr D was advised of this in 2011.

Mr H1 had some additional queries and was seeking more compensation. Scottish Provident responded on 1 May 2024;

- It apologised it had incorrectly stated Mr H2's policy was in trust in its letter of 30 December 2011 and had failed to identify this in January 2020. But it didn't believe this caused the losses as there was sufficient other correspondence for there to have been no reasonable doubt by Mr H2 that the policy was assigned to him. He could have queried it. And because of Mr H2's thorough record keeping Mr H1 and Ms H had the opportunity to recognise this before January 2020.
- Bearing in mind Mr H2 and Mr D's business background it was reasonable to assume absolutely assigning the policy to Mr H2 was intentional, and they understood the consequences. There were no records they wanted to revert to trust.
- Payment of IHT on Mr H2's estate was a consequence of assignment and while its error may have created misunderstanding of the status of the policy this had no impact on the IHT liability because of the action taken in June 2011.
- Any recourse Mr H1 and Ms H wanted to take in respect of claims the estate may have inherited relating to losses on the sale of the business was too remote.
- No further LPI was due, but it offered to pay £500 for the delay in responding to the additional queries. And it was willing to offer £6,620 as a gesture of goodwill towards the solicitor costs.

Unhappy with the outcome, Mr H1 and Ms H brought their complaint to the Financial Ombudsman Service. The investigator who considered the complaint didn't think Scottish Provident needed to do anything more. He said;

- Scottish Provident had provided some misinformation to the late Mr H2 on 30 December 2011 but because of his professional roles he should have known the original trust was dissolved.
- Despite being very unwell and reliant on Mr D, the fact the trust was never revisited wasn't solely because of the misinformation Mr H2 had been given. Scottish Provident weren't responsible for the estate's IHT liability.
- Mr D acting contrary to him no longer being a trustee and by Scottish Provident indicating he was a trustee allowed him to start the process of making the claim on the policy. But there was no indication he was going to do anything other than distribute the funds to Mr H1 and Ms H.
- The investigator didn't agree Scottish Provident was responsible for the proposals Mr D's solicitor put forward. But by Mr D acting as trustee it allowed him to negotiate with Mr H1 and Ms H to waive any claims the estate may have had against the business. Mr D's solicitors didn't check the facts before assisting him in negotiations.
- He agreed the LPI of £33,587.97 was correct as well as the offer of £1,500 for distress and inconvenience because of the misinformation given that reinforced Mr D's interpretation. He also agreed with Scottish Provident's offer to pay legal fees of £6,120 as a gesture of goodwill and that it was Mr D's conduct that bought about the legal action.

Mr H1 and Ms H disagreed with the investigator, but the investigator addressed those comments, and they didn't change his opinion as to the outcome.

Scottish Provident responded with clarification about how it calculated LPI which caused the investigator wrote again to the parties with a fresh assessment detailing evidence that Scottish Provident wouldn't pay out a claim of such a size until Letters of Administration were issued which was on 11 February 2021. So, no LPI was due but Scottish Provident didn't intend on reclaiming it. He reiterated his opinion that the offer of £1,500 for the distress and

inconvenience caused was fair as was the offer to pay £6,120 of solicitor fees as a gesture of goodwill.

Mr H1 and Ms H didn't agree with the investigator. As the complaint remains unresolved, it has been passed to me for decision in my role as ombudsman. Ms H provided a statement to outline her thoughts.

She remained of the view that Scottish Provident's first error was in confirming the policy had been assigned to Mr H2 on 15 September 2011 when this hadn't been processed correctly. Its second error was when it sent Mr H2 the Certificate of Policy Details which said 'Yes' that the policy was in trust. These errors led to loss because of the IHT payment of over £260,000 and the issues had been very stressful for Mr H1 and Ms H since the death of their father over five years ago.

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.

After doing so, I've reached the same conclusion as the investigator and broadly for the same reasons. I'll explain why.

I'm aware I've set out the background to this complaint in far less detail than the parties and I've done so using my own words. The Financial Ombudsman Service was set up to be a quick and informal alternative to the courts. And the purpose of this decision is to explain what I think is fair and reasonable in the circumstances, not to offer a point by point response to everything the parties to the complaint have said. So, I will not refer to every submission, comment, or relevant consideration. Instead, my decision sets out what I think are the most important points in order to explain my decision in a way that is intended to be clear and easy to understand.

For reference, it would be useful to provide a timeline of relevant events;

- 1 October 2001 – Scottish Provident received the Flexible Business Trust document noting Mr H2 and Mr D as trustees.
- 24 June 2011 – Mr H2 retired from the business partnership he had with Mr D and others.
- 19 July 2011 – Scottish Provident received the deed of assignment forms.
- 15 September 2011 – Scottish Provident confirmed the policy had been absolutely assigned to Mr H2 from 24 June 2011.
- 1 December 2011 – Scottish Provident sent copies of all correspondence that had been issued about the policy from April 2011 onwards and which included the above confirmation the policy has been assigned to Mr H2.
- 30 December 2011 – Scottish Provident wrote to Mr H2 and the policy schedule confirmed that the policy was in trust, which was incorrect.
- 23 December 2019 – Mr D contacted Scottish Provident to raise a claim on the policy following Mr H2's death.

- 3 January 2020 – Scottish Provident's internal records show it noticed that the policy had been assigned in 2011, and this was to be checked.
- 6 January 2020 – Scottish Provident wrote to Mr D enclosing a copy of the 28 September 2001 trust document as had requested by Mr D during the call in December 2019.
- 7 January 2020 – As a result of being informed by Mr D of Mr H2's death, Scottish Provident sent a claim letter to him and incorrectly – as it failed to identify the policy wasn't in trust – requested a deed of appointment of a new trustee as 'the trust requires there to be two trustees.'
- 31 January 2020 – Mr D's solicitors wrote to the solicitors for Mr H2's estate wrongly stating that Mr D was the trustee and sole beneficiary.
- 30 April 2020 – Scottish Provident received a trust form appointing Mr H1 and Ms H as trustees.
- 28 May 2020 – Scottish Provident became aware the policy wasn't in trust. Its file note states 'Executors need to make claim as policy assigned out of trust in 2011. They also need to be made aware they will need to declare the policy as part of his estate for IHT purposes.'
- 8 July 2020 – Scottish Provident informed Mr H1 and Ms H's financial adviser that probate would be required.
- 18 December 2020 – Claim paid for £1,129,989,24.
- 11 February 2021 – Full Letters of Administration issued.

Life insurance being outside of trust and subsequent IHT

Mr H2 and Mr D were in business together (along with others) and were trustees of a Flexible Business Trust which I understand allows business owners to protect their life insurance policies and potentially reduce inheritance tax liabilities. Sadly, because of Mr H2's poor health he had to retire from the partnership which gave rise to the assignment of the life insurance policy to Mr H2 as beneficiary.

Upon deed of assignment the trust came to an end as the legal and beneficial ownership was transferred to the beneficiary – Mr H2 – and so this ended the trust's relationship regarding that policy.

I don't think it is any doubt Mr H2 was aware of the consequences of the deed of assignment because of his professional roles as well as the importance of the document as it was part of his retirement from the partnership. After assignment Mr H2 owned the policy outright. Ms H has raised her concern that the deed of assignment wasn't correctly carried out by Scottish Provident in 2011. But I haven't seen any evidence of this. Scottish Provident's internal notes record the deed of assignment was received requesting the sole ownership of the policy to Mr H2. And I've seen a copy of deed of assignment document date stamped as received by Scottish Provident on 21 July 2011. And it subsequently wrote to the partnership on 15 September 2011 to confirm the assignment had been carried out. So, despite Scottish Provident's later errors, I've not seen any evidence the policy deed of assignment wasn't correctly administered at the time.

Mr H1 and Ms H say it was Mr H2's intention to put the life insurance policy back in trust to protect it from IHT for the benefit of his children. Mr H1 has provided copies of Mr H2's notes which indicate he was aware action needed to be taken – 'Need Trust Deed corrected + on life insurance policies' and 'change trust deeds'. I also note from an email Mr H2 sent to Mr D (plus a third party) he asked, with regard to the insurance policies whether Mr D had 'cancelled the trust documents as he promised?'

Mr H1 says it was Mr D who was to deal with the changes to the trust and I note it was Mr H2 and Mr D's business that handled the initial setting up of the trust in 2001 as well as the deed of assignment in 2011. Mr H2 was very unwell in 2011 so was reliant upon the actions of Mr D. But if it was Mr D who was to put the life insurance policy back into trust and that is something that wasn't done, that is not the fault of Scottish Provident.

Mr H1 has said it was Mr H2's concerns about the reversion of the life insurance policy back into trust that caused him to call Scottish Provident in December 2011 and ask for a copy of the policy document. And he says it was that policy document that reassured Mr H2 the policy had been put back into trust. Because of that, Mr H2 didn't take any further action which he would otherwise have done if he had known the policy wasn't in trust. Mr H1 and Ms H say it is because of this misinformation that Scottish Provident is liable for the IHT incurred by the estate.

But I don't agree that one piece of misinformation is the cause of the IHT liability. I say this because if the life insurance was to be reverted into trust, then it would have been for Mr H2 to do. I can't see how Mr D could have done so independently of Mr H2 or without his involvement. Mr H2 would have needed to act, albeit with the assistance of a third party bearing in mind his poor health. And I think it was likely Mr H2 was aware – or should reasonably have been aware – that the life insurance policy had been taken out of trust and action was needed if it was to go back into trust. But despite that awareness, there's no evidence that Mr H2, or Mr D on his behalf, took such action.

And during this time, Scottish Provident had written in September and December 2011 confirming that the life insurance policy had been assigned to Mr H2. Bearing in mind Mr H2's recorded attention to detail and professional status, if the information received on 30 December 2011 contradicted the information that had already been provided by Scottish Provident about the policy, then I would have expected Mr H2 to have raised this with Scottish Provident at the time.

Mr H1 has said Mr H2 didn't receive copies of all correspondence sent by Scottish Provident implying that he might not have received everything that was sent out about the policy and so wouldn't have been aware of the earlier confirmations of assignment. I note Mr H2 and Mr D's business was recorded as being the financial adviser on the 2001 trust application and also administered the 2011 deed of assignment. So, I don't think it was unreasonable for Scottish Provident to have written to the business' address and to have assumed Mr H2 was updated with information it provided – the confirmations in September and December 2011 that the policy had been reassigned. Mr H1 and Ms H provided this service with a copy of the 15 September 2011 letter, and I assume this was in their late father's papers so it's reasonable to conclude he did receive it. And in the absence of Mr H2, or Mr D on his behalf, taking any subsequent action, it's difficult to see why Mr H2 didn't question the accuracy of the 30 December 2011 policy document.

It's clear Mr H2 was otherwise active about his insurance as evidenced by him bringing a complaint to this service which was resolved by a final decision in March 2013. That complaint revolved around the lapsing of the policy because of missed premium payments which while not linked to the merits of this current complaint does indicate Mr H2 was aware of and involved with the policy and capable of recognising an error had occurred.

And I've also seen an email from Mr H2 to Mr D from 29 May 2013 which said 'At our meeting tonight I would be most obliged if you could let me have the policy documents in respect of the above policy'. And the policy number quoted is the one that had been held in trust and then assigned to Mr H2. So, it looks like Mr H2 had the policy documents in 2013 which was post assignment was taking an interest and revisiting the insurance. We know he wouldn't have had sight of any trust documents as part of his revisiting the policy as there weren't any, but he didn't take any action.

I do appreciate Mr H2 was very unwell in 2011 and afterwards, and it looks like he was reliant on Mr D and the partnership for the administration of the policy, so this may have been something that had been misunderstood or overlooked. But that doesn't mean Scottish Provident has done anything wrong – over and above telling Mr H2 on one occasion that the policy was in trust – to the extent that in my opinion would make it responsible for the payment of the IHT due on the estate. That would have come about anyway as the policy was no longer in trust post the deed of assignment and transfer to Mr H2. I don't think that one piece of misinformation outweighed the correct information that was provided confirming the policy was assigned, and Mr H2's knowledge that he had participated in the deed of assignment taking the policy out of trust but hadn't participated in action to put the policy back into trust.

It follows I don't uphold this complaint point and I don't find Scottish Provident responsible for the estate's payment of the IHT.

The assignment and claim

Mr H1 has told us he tried to inform Scottish Provident of his father's death on 7 December 2019 but was told it could only speak with a trustee who he was able to guess was Mr D. So, Mr D then contacted Scottish Provident to register the death of Mr H2. And at this time Scottish Provident didn't recognise it shouldn't have had any dealings with Mr D. Instead, it wrote to him on 6 January 2020 with a copy of the 2001 trust document and then again on 7 January 2020 about making a claim on the policy and enclosing a form requiring Mr D, as existing trustee, to arrange for a second trustee to be added to the trust.

It's not clear to me why Scottish Provident didn't realise its error at the time. And equally, I would question why Mr D didn't challenge this with Scottish Provident as he had been party to the deed of assignment in 2011 while his business was the financial adviser linked to the trust. As such, he would have known the life policy had been assigned to Mr H2 and out of the trust, he was no longer a trustee, and he had nothing to do with the life insurance policy, in any capacity.

And it should also be borne in mind that after the above, Mr D engaged solicitors, who in turn presented him as being the trustee and beneficiary, by default, of the trust when he wasn't. It's not clear to me why the solicitors did so as it's known that Mr D wasn't a trustee or beneficiary. But this would be an issue for the estate to take up separately and outside of this current complaint. Despite that, I can't see there was any suggestion Mr D intended on benefiting from the policy. And I see Scottish Provident's letter of 7 January 2020 referred to the death benefit of the policy potentially affecting the late Mr H2's estate for IHT purposes which would indicate his estate was the beneficiary.

To ensure it was Mr H2's estate that would benefit from the claim payout, Mr D's solicitors wrote to Mr H1 and Ms H's solicitor on 31 January 2020. In that letter it referred to the 2001 Flexible Business Trust and that Mr D was the sole trustee and the default beneficiary. The letter contained three proposals;

- Mr D was willing to pass over the policy proceeds providing an indemnity was taken out to protect his estate from IHT if he were to die within the following seven years.
- Mr H1 and Ms H were to pay the legal costs.
- There was a mutual waiver of claims between the estate and the business partnership.

The proposals were agreed.

Regarding the third proposal, I understand that prior to his death Mr H2 had made claims that sums were owed to him by the partnership since his retirement. The estate says that it has lost out because it agreed to the mutual waiver of claims, so can't claim for any sums that were owed to Mr H2, and this is the fault of Scottish Provident. Clearly the solicitor's proposal and agreement would mean that the estate couldn't make any claim against their late father's business and vice versa. So, I have to consider whether – because Mr D, Mr H1 and Ms H were misinformed about the trust status of the life insurance policy – Scottish Provident is responsible for the fact that the estate can no longer make any claims against Mr H2's previous business.

Mr D's solicitor's letter said the waiver of the claims was to 'allow our client and your clients to move forward and your clients to distribute [the estate] without any concern of claims arising in the future.' But I think that is a separate issue from the misinformation provided by Scottish Provident about Mr D and his ability to make a claim on the life insurance. No doubt Mr H1 and Ms H are of the opinion that they wouldn't be in this position but for Scottish Provident allowing Mr D to potentially proceed with a claim.

However, it seems likely to me, that Mr D was aware – or should reasonably have been aware – he wasn't a trustee of a trust linked to the life insurance policy. By acting as trustee and beneficiary that allowed him to have a relationship with the estate he wouldn't otherwise have had. He was able enter into negotiations with Mr H1 and Ms H. But I don't agree the proposal to mutually waive any claims stemmed from Scottish Provident's incorrect dealings with Mr D by treating him as a trustee.

I say this because I am of the opinion the potential payout from the claim on the insurance policy and a mutual waiving of claims between the estate and Mr H2's previous partners are two distinct proposals and not contingent on each other. And further, I can't know whether any claim against the partnership would have been successful in any event.

I haven't seen any evidence that it was solely because of Scottish Provident allowing Mr D to proceed with the claim that caused Mr H1 and Ms H being pressured into signing their agreement to waive any further claims. I think their agreement came about because Mr H1 and Ms H were given the incorrect belief by Mr D that he had authority over the dispersal of any insurance claim proceeds because he was the trustee and beneficiary by default.

And I've also borne in mind despite Mr D and his solicitors presenting him as being the trustee and default beneficiary, Mr H1 and Ms H also had legal representation. But, as I've said above, there's no indication that Mr D had the intention of doing anything other than paying any claim over to the estate which would have given Mr H1 and Ms H cause to think this was a possibility, however, I accept Mr H1 and Ms H may have been in a vulnerable position.

But I note from an email from Ms H sent to Mr H2's business upon finding out about the 2011 assignment, that to get the payout as soon as possible, Mr H1 and Ms H would be willing to sign a letter addressed to Scottish Provident to say they were happy for the funds to be paid to Mr D and argue that Scottish Provident hadn't processed the assignment

properly. Clearly this was said without the knowledge that Scottish Provident had previously informed Mr H2 the policy had been assigned, but it indicates to me a willingness to continue down the path that had been agreed to in the proposal letter rather than wait to see the outcome of the 2011 assignment and reassess the agreement.

So, despite the misinformation given by Scottish Provident about the trust still being in place and dealing with Mr D in his role as if he were trustee and which caused confusion, I agree with Scottish Provident's view here that Mr H1 and Ms H voluntarily waived their rights to any claims. I can't see there is any link between the payout due from the life insurance policy and any future claims the estate may have had against Mr H2's previous business. It follows I don't uphold this element of the complaint.

However, if Mr H1 and Ms H consider the proposals that were put to them were couched in such a way that caused them to agree to those proposals which they wouldn't otherwise have done, that is matter they need to take up outside of this complaint.

Overall, while its acknowledged Scottish Provident did make an error by stating the life insurance policy was in trust on 30 December 2011 and didn't make Mr H1 and Ms H aware of this error until 8 July 2020 when it had recognised its error sooner, I'm not persuaded that one piece of misinformation means Scottish Provident is responsible for the estate's IHT liability. And while Scottish Provident's inappropriate dealings with Mr D didn't help matters, it was Mr D's subsequent actions when putting the proposals to Mr H1 and Ms H while presenting himself as trustee and beneficiary and which meant Mr H1 and Ms H agreed to waive any claims, but Mr D's actions are not subject to this complaint.

I am very sorry to hear of the issues Mr H1 and Ms H have experienced. And I accept their comments that the situation they have found themselves in with the administration of their late father's estate was most likely not his intention. The unfolding situation must have been very distressing for them particularly in light of their father's death. But for the reasons I have given, I don't find it was Scottish Provident's actions that have led to the payment of IHT or Mr H1 and Ms H's agreement to waive claims. The issue of IHT being payable arose from the trust being dissolved in 2011. At that point Mr H2 signed the deed of assignment meaning that he was sole beneficiary and there's no evidence that Mr H2 then went about reverting the life insurance policy into trust. So, I won't be asking Scottish Provident to do anything more than it has already offered;

- I agree the LPI payment of £33,587.97 is fair and reasonable. Payment of the claim was made on 18 December 2020 and Full Letters of Administration weren't issued until 11 February 2021 but Scottish Provident isn't going to claim the payment back.
- Scottish Provident has also offered a total of £1,500 for the distress and inconvenience caused and the delay in responding to Mr H1 and Ms H's further queries. I also think this is fair and reasonable in the circumstances of the complaint.
- And as a gesture of goodwill Scottish Provident offered to pay legal fees but limited to the amount of £6,120. This was because other legal costs related to the probate, Mr D's conduct and claims against the partnership, which weren't attributable to Scottish Provident. I agree with Scottish Provident's view here.

I understand that all the above payments have already been made, but if I am wrong on that point, then Scottish Provident should issue payment split equally between Mr H1 and Ms H.

No doubt Mr H1 and Ms H will be disappointed with the outcome. It's clear they feel strongly about their complaint which is understandable under the circumstances, and I'd like to thank them for the time and effort they have spent in bringing the complaint. But I hope I have been able to explain how and why I have reached my decision.

My final decision

For the reasons given I don't uphold the estate of Mr H's complaint about The Royal London Mutual Insurance Society Limited trading as Scottish Provident.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mr H to accept or reject my decision before 17 June 2025.

Catherine Langley
Ombudsman