

The complaint

Mr S as trustee of the W Trust (Mr S) complained about the service received by Phoenix Life Limited (PL) when claiming on a life insurance policy.

What happened

The late Mr W took out a life insurance policy with PL in 1997. Mr W sadly passed away in October 2022. Mrs W, who was executor of Mr W's estate, raised a claim with PL in October 2022. Whilst Mrs W was made aware that Mr W's policy had been held in trust, she was initially told that her late husband was the only trustee. The claim was eventually paid in June 2023. During that time, Mrs W had exchanged written correspondence and had several phone calls with PL.

In mid-May 2023, Mrs W was informed by PL that there was another trustee and their consent was needed for payment to be made. Mrs W was unhappy with how long it had taken to be told this. She was also unhappy that she'd been provided with incorrect phone numbers and promised call backs that hadn't taken place. Mrs W raised a complaint.

Prior to PL responding to Mrs W's complaint, Mr S had requested payment of the policy benefit to his solicitors. Mr S's solicitor charged a fee for handling the claim payment. Mrs W complained to PL about this issue too.

PL upheld Mrs W's complaint. They offered her £300 compensation and 8% simple interest on the claim settlement from the date of claim notification until payment due to the delays caused. PL didn't comment on the legal costs incurred. Mrs W wasn't happy with PL's response and brought the complaint to our service.

When sending their case file to us, PL agreed to increase the compensation offer by £200 to a total of £500.

Our investigator didn't uphold the complaint. They thought that whilst PL had caused delays and their customer service could have been better, how PL had offered to put things right was fair and reasonable in the circumstances. They also didn't think PL needed to cover the legal costs incurred as this was a result of Mr S's request to send the claim benefit to his solicitors.

Mrs W with Mr S's agreement didn't agree with our investigator's outcome. Mrs W said she didn't think it was reasonable for PL to insist the payment was made to Mr S's solicitor when she'd previously asked for it to be paid directly to her daughter. Mrs W also said she was the eligible claimant as she was named as the executor of Mr W's estate on his Grant of Probate. She said that this was absolute and so she was the absolute trustee of Mr W's estate, which included the insurance pay-out. She also said that PL didn't consult her about paying Mr S's solicitors. As no agreement could be reached, the complaint has been passed to me to make a final decision.

What I provisionally decided – and why

In my provisional decision, I said:

“I’ve considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint.

Based on what I’ve seen so far, I don’t intend to uphold Mr S’s complaint.

At the outset I acknowledge that I’ve summarised the complaint in far less detail than Mr S and Mrs W have, and in my own words. I’m not going to respond to every single point made. No discourtesy is intended by this. Instead, I’ve focussed on what I think are the key issues here. The rules that govern the Financial Ombudsman Service allow me to do this as it’s an informal dispute resolution service. If there’s something I’ve not mentioned, it isn’t because I’ve overlooked it. I haven’t. I’m satisfied I don’t need to comment on every individual point to be able to reach an outcome in line with my statutory remit.

Having reviewed everything provided, I don’t think it’s in dispute that the service provided by Mrs W isn’t to the level it should have been. However, when considering compensation, I can only look into the distress and inconvenience of the eligible complainant. In the circumstances of this complaint, as the policy was held in trust, this is Mr S. Whilst I agree Mrs W has been caused distress and inconvenience in how the claim has been dealt with by PL, and I’m not downplaying this, I can’t consider the distress and inconvenience caused to Mrs W in this decision.

However, whilst I have no authority to direct PL to do so, I would hope that PL would still honour the £500 compensation offered to Mrs W for the distress and inconvenience caused should she wish to now accept this.

In regard to delays to the claim being paid, PL have agreed to pay 8% simple interest on the sum assured from the date the claim was raised to the date of payment. This is in line with how our service would expect a firm to put things right when causing a delay. I note that Mrs W is unhappy that PL have deducted tax from the settlement. This doesn’t form part of this complaint and should Mr S be unhappy with this, as trustee he can raise this as a separate complaint with PL.

As trustee, Mr S requested on his claim form that the claim settlement was paid to his solicitors. Whilst I appreciate that this incurred a financial cost, I don’t think it’s unreasonable for PL to have followed Mr S’s instructions. As Mrs W wasn’t an eligible claimant, there was no requirement for PL to consult with Mrs W about the payment to the solicitors.”

Therefore, I wasn’t minded to direct PL to do anything further.

Responses to my provisional decision

Mrs W on behalf of Mr S confirmed she didn’t agree with my provisional decision. She set out the following reasons why:

- She wanted confirmation certain evidence had been reviewed and if I’d asked PL to listen to all the phone calls
- PL incorrectly insisted the claim form should be completed by Mr S
- PL were wrong to insist payment was made to the trustee

- Mr S didn't lodge the complaint
- She was the legal owner of the policy as the executor of Mr W's estate and not Mr S as trustee. The Grant of Probate has an absolute nature and effect
- The investigator deemed her to be an eligible complainant. PL never referred to Mr S as a complainant. PL has never said she wasn't an eligible complainant
- PL has offered and paid compensation to her and they wouldn't have done so had she not been an eligible complainant
- It wasn't practical or feasible for Mr S to be directly paid the funds. PL forced payment to be paid to Mr S or his solicitors

PL didn't respond to the provisional decision by the deadline.

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've thought carefully about the responses to my provisional decision. Having done so, while I appreciate it will come as a disappointment to Mr S and Mrs W, my conclusions remain the same. I'll explain why.

I'd like to start by assuring Mrs W that I've reviewed all the evidence provided on the complaint. I haven't asked PL to listen to phone calls as they've already provided their final answer on the complaint but I didn't think it was necessary based on the outcome of the complaint.

Mr W's policy was held in trust. Mr S is the only living trustee. The trustees are the legal owners of the assets held in a trust. Their role is to deal with the assets according to the settlor's (Mr W) wishes. The policy didn't form part of Mr W's estate as it was held in trust.

Whilst I accept that Mrs W was the executor of Mr W's estate, this didn't include Mr W's life insurance policy. Mr S was the legal owner of the policy as trustee.

The Financial Conduct Authority (FCA) set out the rules around our service in their handbook. The FCA sets out what an eligible complainant is. This complaint is about how a claim has been dealt with. As the legal owner, the trustee is responsible for this and is the correct eligible complainant in line with the FCA's rules.

Based on the above, Mr S is the eligible complainant in respect of our service. It wasn't unreasonable for PL to ask Mr S to complete their claim form or insist that payment was made to Mr S or his appointed solicitor. This isn't unusual as PL need to ensure that payment is made to the legal owner of the policy so they can then follow the wishes of Mr W in line with the Trust. I don't think it's unreasonable for PL to require payment to be made to the trustee or their solicitor.

I accept that Mr S didn't lodge the complaint with either PL or our service. However, Mr S is still the eligible complainant and has given us his consent for us to investigate the complaint. PL initially investigating a complaint for Mrs W or offering her compensation doesn't change this.

Our service has a two-stage approach. I didn't agree with the investigators outcome which is

why I issued a provisional decision. While I accept the investigator had thought Mrs W was an eligible complainant, for the reasons I've explained above, this isn't correct.

My final decision

For the reasons I've given above, my final decision is that I don't uphold this complaint. I don't require Phoenix Life Limited to do anything further.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 28 November 2024.

Anthony Mullins
Ombudsman