

The complaint

Ms L and Mr L as trustees of the L Trust have complained about Phoenix Life Limited (Phoenix). The trustees said Phoenix has been unreasonable in wanting sight of the original trust deed, in the event of a claim on a whole of life policy that is held in its trust. They said Phoenix should accept the new deed that they have provided and use this in the event of any future claim.

Ms L is the settlor, trustee and also the representative in this complaint. She has brought the complaint about Phoenix and so I have referred to her throughout, but to be clear the complaint is from both trustees of the L Trust.

What happened

Ms L took out a whole of life policy called a 'universal protection plan' from Royal Sun Alliance in 1999. Ms L took the decision at that time to hold the policy in trust. Another party was a trustee and her then husband was the beneficiary.

In 2023, Ms L decided she needed to revise her policy with the aim of removing the other trustee and changing this to one of her sons. She then wanted to make both of her sons beneficiaries instead of her ex-husband. Her policy was now being managed by Phoenix, and so she made contact to ask how this could be done.

Phoenix told Ms L that she would need to get legal advice about this and that it didn't provide forms to do this anymore. Ms L provided what she called a new deed that she had put together herself. Within this document, she put forward the amendments that she wanted to make, that I have already described. This form was eventually accepted by Phoenix, and it made the amendments to her policy. So, her sons were the beneficiaries and one of her sons became a trustee.

However, Phoenix wrote to Ms L and said that although it accepted the amendments and the new deed form, if there was a claim in the future, it would need to have sight of the original trust deed. Ms L and the previous trustee couldn't find the original trust deed and have said they were not given an original copy by Royal Sun Alliance.

Ms L was not happy with the way Phoenix dealt with her complaint. But in particular and she said it was the crux of her complaint, she wanted Phoenix to accept her new deed document and considered the old deed document was irrelevant. She said she wanted Phoenix to write to her to confirm that it would accept any claim based on what she called the new trust deed.

Ms L also was not happy with a number of issues regarding the way Phoenix dealt with her complaint. This included that it didn't respond in good time and didn't provide a prepaid envelope in one of its letters it sent out requesting for documents to be sent back.

Phoenix was delayed in responding to Ms L and has since admitted this to our service. It has made an offer of £300 to Ms L for the errors it said it made in responding to her. That said, it said it had done nothing wrong in informing Ms L that it would require a copy of the original deed document if a claim was made in the future. It told our service that the original deed

from 1999, was still live and the amendment deed document, is just this, it's an amendment to the original. It said both documents form Ms L's trust deed. So, it said, it would need sight of both, in the event a claim was made.

An investigator looked into Ms L and Mr L's complaint. He said he felt Phoenix dealt with their complaint fairly and reasonably. He concluded it was the responsibility of the trustees to maintain information about the trust including the original trust document. He said it was fair and reasonable for Phoenix to require sight of the deed, to ensure all legal owners were aware and accepted discharge of the policy.

The investigator said he could see Phoenix accepted it caused a delay in responding from 3 October 2023, where the trustees requested information from it regarding changing the deed. It also accepted it took longer than it should have done to respond to Ms L's complaint and that it didn't enclose a prepaid envelope.

The investigator said he was satisfied Phoenix had acted fairly and reasonably, in the circumstances and its offer of £300 was fair and reasonable. He said he wouldn't be asking it to do anything further.

Ms L was not in agreement with the investigator's view. Ms L said:

- She was never informed of any compensation or Phoenix's offer of £300.
- If the previous trustee had since signed the new trust form confirming that she was not the trustee anymore and this had moved to the new trustee, her son, then why were Phoenix still asking to have sight of the old trust deed, if a claim was ever made.
- Phoenix had accepted the new trust document, signed by all parties. She did not have the old deed and neither had the previous trustee, so they couldn't provide it. She said the new document overrides the previous one anyway.
- How could she have a policy that takes her money every month, that won't pay out, because she didn't have the original deed.
- She asked two separate solicitors and they both agreed that the old deed was irrelevant, and the new one was valid. And any claim must be paid out to the trustee, her son.

Because the parties are not in agreement, the trustees complaint has been passed to me, an ombudsman, to look into.

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 have independently reviewed the trustees complaint and have arrived at the same outcome as the investigator, for broadly the same reasons. I will explain why.

It is clear from reading through everything, that the crux of Ms L's complaint, is in regard to the trust deed and whether Phoenix would accept what Ms L has already provided to it, if a potential claim was made. Ms L has been clear herself; she thinks it should and that the amendments she recently made were on a new deed document. She said this should be accepted and Phoenix should confirm to her that it would pay any future claim based on what it has already got.

Phoenix on the other hand has also been clear: that it would require sight of the original deed document and the original amendment document if it was to proceed with any claim. And this is the source of Ms L's frustration as she has told Phoenix and our service that she doesn't have the original deed document from 1999. So, there is a dispute here between the parties.

Phoenix has told our service that it doesn't keep original trust deeds and instead passes them to the trustees, when it sets up a trust. I am also aware, that it is part of the trustees role to be the guardian of the original trust documents.

So, because of what I have just concluded, I don't think it would be fair or reasonable of me to draw a conclusion that on balance, it was Phoenix that had misplaced the original trust deed. Or that it was now responsible for paying for this issue to be resolved. Rather, I think on balance, it is the trust, and the trustees that have a responsibility here to deal with any issues that have arisen or will arise due to there now not being an original copy of the deed.

This moves me on, to what Phoenix ought to be relying on here, going forward. Ms L said she has provided a new deed document, and this has replaced the old document. She said it means the old document is irrelevant. Phoenix on the other hand disagreed and said the original deed from 1999 was still in place. It said it accepted her amendment document, but it is just that: an amendment. It said the original deed and the amendment together form Ms L and Mr L's trust deed.

Phoenix has more recently provided a fuller answer to our service about the trust deed, and I will provide an extract of this as I think it is relevant to this complaint point:

"The trust deed dated 20/1/2023 does not completely replace the original trust deed nor does it make it invalid, instead these deeds together form the trust. [Ms L] used her powers contained within the original trust deed to (1) remove [the previous trustee] as trustee, (2) appoint [her son] as new trustee, and (3) appoint [her sons] as beneficiaries. The original trust deed is still valid, and the trust provisions specified therein still govern the trust. Technically the correct format for updating trustees and appoint beneficiaries would not have been a new trust deed but instead (1) a deed of appointment and removal of trustees and (2) deed of appointment of beneficiaries. However, as the deed dated 20/11/2023 satisfied the powers specified in the original trust deed (see trust provisions clause F on change of trustees and Box A1 and the following paragraphs on appointment of beneficiaries) then we were willing to accept this as change of trustee and beneficiaries of the trust. All other terms which govern the trust are outlined in the original trust deed".

Currently if the deed is lost then the claimants declaration on the claim form indemnifies Phoenix against any fraudulent claims. At claim stage it is our process to request sight of all trust deeds to ensure we have satisfactory discharge from the legal policy owners. It is at claim stage when the monies become payable that we have to be satisfied that we have discharge from and are pay to, the persons legally entitled to receive the proceeds."

I am satisfied that what Phoenix has said here is the case, in respect of Ms L's trust deed. In particular that the amendments made by Ms L with her new trust deed document, did what she wanted it to: changed the trustee and beneficiaries – but the other terms that govern the trust were not covered by Ms L's document. Therefore, it was an amendment document that carried out a specific task, and not a restatement or new deed, as she has suggested. I also accept the reasons why Phoenix said it required sight of the original deed document, and presumably for the same reasons, the original amendment document too, in the event of a claim.

So, in conclusion I don't think Phoenix has done anything wrong in what it has told Ms L its requirements are, in the event of a claim on the whole of life policy, held within the trust. I don't think it was wrong to say it needed sight of the original trust deed. I don't think this would be an unreasonable request, if it ever needed to process a claim, for the reasons that have been given, namely that it needs to satisfy itself that it could discharge its duties and in particular, ensure this was with the legal policy owners.

In short, this means the trustees will need to consider their options here, in terms of how to obtain an original trust deed document that incorporates the original one and the amendment. A solicitor maybe able to advise on their options about a restatement, or whatever would work for them in their circumstances, but, in any case, this would be a matter for the trustees to consider going forward.

Finally, all that is left for me to consider, is that Phoenix has admitted it made mistakes, in particular about how it dealt with Ms L's complaint. I think £300 is a fair and reasonable offer from Phoenix, for the distress and inconvenience it would have caused Ms L. It's similar to the sort of award I would have made, as I do think a fuller answer from Phoenix from the outset may have resolved matters a lot sooner, and clearly has been a source of frustration and stress for Ms L, as she has tried obtaining a response and answers from it.

It follows, based on everything I have read and the findings I have given, that I don't think Phoenix needs to do anything further, other than pay £300 for the distress and inconvenience it has caused Ms L.

My final decision

My final decision is that Phoenix Life Limited should pay Ms L £300 for the distress and inconvenience it has caused in all the circumstances of Ms L and Mr L, as trustees of the L Trust's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms L and Mr L as Trustees of the L Trust to accept or reject my decision before 28 February 2025.

Mark Richardson
Ombudsman