

## **The complaint**

The estate of Mr C complains Liverpool Victoria Financial Services Limited (“LV”) paid to the wrong party the proceeds of Mr C’s life policy and refuses to seek to recover those proceeds or to pay them to the estate’s administrator.

The complaint is brought on behalf of the estate by the sole administrator of the estate, Mr C’s son. When I refer below to the administrator, I refer to him.

## **What happened**

Mr C died in June 2022. His daughter registered his death in July. She contacted LV later in July and claimed the proceeds of Mr C’s LV life policy. LV paid these to her, which I gather amounted to over £13,000. Mr C’s son was made sole administrator of the estate by a grant of Letters of Administration (LOA) in October. When he applied to LV on behalf of the estate for the policy proceeds, he found LV had already paid these to Mr C’s daughter. So he complained. He said the result of LV’s act was he would have to take expensive legal action to recover the funds, and he said LV should recover the funds instead.

LV rejected the complaint. It said it had followed its own processes properly and it was not for LV to become involved in disputes between the beneficiaries of an estate.

Our investigator considered the complaint and thought LV had acted fairly. In essence this is because our investigator was satisfied LV had followed its own claims process correctly. In summary this meant that for a policy below a certain value, LV wouldn’t wait to pay the legally appointed representative of the estate but instead would be willing to pay a close relative, like a daughter if there were no living spouse.

The administrator rejected our investigator’s conclusions. He said, amongst other things, that LV had failed to contact the named beneficiaries on the policy, that the investigator was wrong to say there weren’t named beneficiaries as LV had mentioned them and it was wrong to dismiss this as having been an error, that the investigator ought to have asked to see the surrendered policy and had only seen what LV wanted to show, that if the administrator and Mr C’s daughter weren’t named on the policy then LV shouldn’t have paid it to the latter, that legally the estate should have been divided equally amongst surviving children and that LV had paid the proceeds out before anyone could reasonably have obtained a grant of LOA.

As the complaint couldn’t be resolved informally it has been passed to me to decide. Before I go further, I’d like to say I’m sorry for the administrator’s loss of his father and I extend my condolences to him at this sad time.

## **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, I’ve arrived at the same outcome as our investigator. So I’ve decided not to ask LV to do more and not to uphold the complaint. I’ll explain my reasons.

LV says the policy itself didn't say who should receive the benefit when Mr C died. It has sent screenshots to show Mr C hadn't used the facility to name people to benefit from the policy or to specify their share of its benefits. Also there's no evidence the policy was held in trust. So despite reference to beneficiaries in exchanges LV had with the administrator, I find neither Mr C's daughter nor the administrator were named on the policy as beneficiaries.

I'm satisfied the policy wasn't subject to trust and its benefits weren't otherwise earmarked for particular persons. For example, I'm satisfied there isn't in existence a copy Mr C's policy specifying particular beneficiaries. As such the policy proceeds belonged to Mr C's estate.

Such proceeds should be paid to the legally appointed representative of the estate. Where, as in Mr C's case, there is no will naming an executor and no living spouse, Mr C's children were the next entitled to apply for a grant appointing them to administer the estate. Mr C's son and daughter were both entitled to apply for this. Mr C's son did apply without including Mr C's daughter as a joint applicant and notes held by LV say Mr C's daughter didn't know Mr C's son was going to apply for the grant. From what's been said, Mr C's daughter applied to receive the policy proceeds also without the knowledge of Mr C's son.

As for how the estate proceeds should be distributed where there is no will and no living spouse, the children are entitled to equal shares of the estate. Equal entitlement to an estate means an equal share of the whole. But an equal entitlement doesn't mean each beneficiary will get the same things or share equally in the value of any particular asset. So if Mr C had two children, it doesn't mean his daughter should have been paid half the policy proceeds or no more than half. How the division of assets is organised will vary. If there is disagreement between the parties as to how to divide assets between them and if this can't be resolved between the parties, such matters may have to be decided by a court.

For example, in this case the value of Mr C's estate was stated by the administrator on the LOA application as being £48,500. He has told us Mr C's daughter took more than £49,000 from Mr C's bank account and spent money on Mr C's credit cards. These claims and the basis on which Mr C's daughter considered herself entitled to such funds from the estate, are factors that would need to be weighed by a court if adjudicating on a dispute over the distribution of assets amongst the estate's beneficiaries.

It wasn't for LV to share out the proceeds between beneficiaries or to try to decide to what share of the policy proceeds Mr C's daughter was entitled. I agree LV wasn't responsible for finding out who all the potential beneficiaries were, what the estate assets were, what people had already received and what their entitlement to the policy proceeds might be in light of all of that. So it wasn't that LV should have paid half each to the administrator and to Mr C's daughter. It was enough to pay the proceeds to a single person who could then distribute them to those entitled to receive them. But LV had to pay the policy proceeds to someone entitled to receive those proceeds on behalf of Mr C's estate.

Once appointed, the administrator was the legally appointed representative of the estate and is responsible for collecting estate assets and ensuring the estate proceeds were distributed correctly. But no administrator had been appointed in July at the time LV made the payment, and one would not be appointed until more than two months later in October.

LV says the payment it made was in line with its process, and I've seen no reason to doubt that - but this isn't, of course, in itself enough to justify LV making the payment in that way or to absolve LV of responsibility if it ought to have acted differently and caused loss to the estate as a result. I've considered this carefully.

LV couldn't have been criticised if it had insisted on paying the policy proceeds out only to a person holding a grant of representation. But I would point out that a formal grant isn't

always obtained, and it is possible to collect estate assets and share them out without this in some instances. LV's commercial decision to pay the funds without a grant should be seen in this context. Also LV didn't pay the proceeds to Mr C's daughter knowing a grant was held by someone else seeking the funds – no grant had been obtained by anyone at that point.

As I understand it, LV paid out the policy proceeds to Mr C's daughter because she was in possession of the death certificate (which also stated she was the daughter) and, as there was no living spouse (a point supported by details on the death certificate), she held the rank of next of kin, being the next closest relative. The administrator says the title of next of kin is meaningless, but I don't agree. It was significant here because it means the person LV paid was someone in the highest rank of people entitled to obtain a grant if LV had insisted on one. Mr C's son's right to seek to represent the estate was equal to, not superior to, Mr C's daughter's at that time – and both also had a right to the same share of the estate assets.

Mr C's daughter was also named on the death certificate, so LV will have known the person it was paying the proceeds to was Mr C's daughter and it had her details. It also checked she was who she said she was – and there is no dispute that she was the daughter.

Ultimately anyone receiving funds - whether Mr C's daughter or the administrator or anyone else – would have a duty to give up or pass on any part of the estate proceeds to which they were not entitled. LV relied on this happening and in my view it wasn't unreasonable for LV to rely on this – or if it couldn't rely on this, then there was a likelihood of a dispute of some kind arising between beneficiaries in any event.

With this and all I've said above in mind, I don't see that LV acted unreasonably in paying Mr C's daughter the proceeds of the policy.

I've also thought about whether the approach LV took means it caused loss to the estate or ought to involve itself in attempting to recover funds from a beneficiary entitled to part of the estate who it is alleged by another beneficiary has taken more than their fair share. Had LV insisted on waiting for and only dealing with a person having the LOA, I don't see that this was bound to avoid the problem of a person receiving the proceeds but not sharing them out properly – or bound to avoid the need for court action to determine how things should be divided. I note in passing that had LV told Mr C's daughter it would pay out the policy proceeds only to a person named as a representative on a grant of representation, it isn't obvious that she couldn't have applied for and been named on such a grant and obtained the policy proceeds, bringing about the same or a similar situation to the one that did occur.

I can't be sure exactly how things might have unfolded in that eventuality of course, but I mention this possibility to illustrate that it seems to me any misallocation of resources of the kind that the administrator has explained has arisen between beneficiaries, is in my view at root the result of an absence of agreement between the beneficiaries of the estate. It also seems to me that this alleged misallocation of resources is not a loss to the estate as such, but a dispute between beneficiaries about the allocation of estate resources. LV has said it would liaise with the administrator, his solicitor or the police to help them look into this. In my view this is a reasonable approach for LV to take.

I bear in mind there is a potential for costs to arise for the estate depending on what steps the administrator finds are needed to recover funds from parties holding them who are not entitled to them. But in the circumstances here I find that such costs, at root, are caused by and result from a lack of agreement between the beneficiaries as to the rights over the estate assets, rather than from how LV made its payment. It isn't obvious to me that costs of this kind – if incurred – wouldn't have been incurred anyway due to this lack of agreement. In saying this I bear in mind for example what the administrator has said about how other assets of the estate have been taken or disposed of by the other beneficiary.

I bear in mind also what I've said above about how the other beneficiary might have applied for a grant to represent the estate and obtained estate proceeds in that way, although setting that point aside wouldn't change the substance of my conclusions here.

LV's approach, in paying the proceeds to Mr C's daughter, may well have caused the administrator extra work and inconvenience. I acknowledge this but I have no power to make an award for inconvenience of that kind suffered by the administrator of an estate. I can make no award for inconvenience suffered by the administrator in his personal capacity as beneficiary of the estate either, because he isn't bringing the complaint to us in his capacity as an estate beneficiary - and he wouldn't be eligible to do so in that capacity in any event. I can only consider the complaint from him in his capacity as the representative of the estate.

In conclusion and taking everything into account, on balance I'm not persuaded that it would be fair and reasonable to require LV to do more in all the circumstances here or that I ought to make an award against LV in favour of the estate.

So in light of all I've said above, for the reasons I've given, I do not uphold this complaint.

I'm grateful to the administrator for his prompt and complete responses to all our enquiries, which have assisted our investigation, and I thank him for his assistance throughout. I'm sorry my conclusion will disappoint him.

### **My final decision**

For the reasons I've given above, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mr C to accept or reject my decision before 10 January 2024.

Richard Sheridan  
**Ombudsman**