

## The complaint

Mrs R has complained to Stephen McDine IFA Limited ('Stephen McDine') about the assets she thought were held in trust set up for the benefit of her daughter. Mrs R doesn't understand why her previous solicitor is a trustee and the first life assured of the investments held within the trust. Mrs R isn't happy about the adviser fees that have been taken directly out of the bond.

## What happened

The trust was set up in 2010 and Mrs R invested £30,000 into a bond held within the trust via policy number ending 931 with a product provider I shall refer to as 'Company A' in my decision.

Mrs R invested a further £30,000 into the trust in 2016 via further policy number ending 527 with Company A. Mrs R thought this had been added to the original policy and not a new one.

Mrs R couldn't understand why her previous solicitor was trustee for the trust. Mrs R had her nephew replaced as trustee at a cost of £1,500.

In 2017 and 2018 Mrs R invested further funds which she thought were again written in trust, but the bonds were in her sole name. The funds were invested with a different product provider I shall refer to as Company B in my decision.

Mrs R also wasn't happy with the charges she had incurred so she complained to Stephen McDine who issued its response on 27 January 2023. It said;

- The terms of the policy Mrs R set up in 2010 With Company A meant the bond invested into couldn't be added to and the only option was to invest in a new bond – with Company A – that was still held within the family trust and which benefited from a lower charging structure.
- It provided details of the advice given in January 2017 and February 2018 to invest £20,000 and £10,000 respectively into a bond with Company B.
- The adviser didn't choose Mrs R's solicitor as trustee.
- Mrs R and her daughter signed an agreement in November 2016 to opt for an annual fee of 0.05% to be deducted from the bond. Mrs R could cancel this agreement at any time.

Our investigator who considered the complaint didn't think it should be upheld. She said;

- Stephen McDine wasn't involved with the setting up of the trust so couldn't comment on Mrs R's solicitor being the trustee.
- Both Mrs R and her daughter signed their agreement to the annual 0.05% fee to be taken out of the bond in November 2016.
- A second bond with Company A and held within the trust was necessary as the terms of the first bond invest into in 2010 meant it couldn't be added to.

- The bond with Company B was set up in 2017 as Mrs R didn't want that bond to be in trust for the time being and was in her name only.
- The suitability letter at the time confirmed that two bonds were already held with Company A and written in trust. This new bond was to be with Company B.
- She couldn't see that Stephen McDine had acted unfairly.

Stephen McDine confirmed that the fee taken was actually 0.5% but he hoped the complaint had now been resolved for Mrs R.

Mrs R didn't agree. She said the for the investments with Company B she had asked for them to be in trust and had been assured that it was.

### **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 have reached the same conclusion as the investigator, and broadly for the same reasons. I'll explain why.

#### Mrs R's solicitor appointed as trustee

Mrs R doesn't understand why her previous solicitor was appointed trustee of the trust rather than his business.

I agree with the investigator that this isn't something that can be considered under a complaint made about Stephen McDine. The trust was set up by Mrs R's solicitor and without any involvement with Stephen McDine.

This complaint it is only about the actions of Stephen McDine. So, I'm satisfied it doesn't have anything to answer for about this part of the complaint.

#### The fees

In its final response to Mrs R's complaint, Stephen McDine said that Mrs R and her daughter opted for the annual fee to be deducted from the bond. It has provided me with a copy of the 2016 application to invest with Company A. I can see that the first life assured is Mrs R's solicitor and the second life is Mrs R's daughter acting as trustees for the trust already in existence. Mrs R's details are given separately as settlor of the trust. This section is signed by both lives assured – Mrs R's solicitor and her daughter.

Further on in the document there is a 'Section 6 – Instructions for Ongoing Adviser Charges' and I can see that the ongoing adviser charges are written by hand as 0.5% of the original investment and was to be deducted monthly. The overall document is also signed and dated by Mrs R's solicitor and Mrs R's daughter.

So, I don't agree with Mrs R that Stephen McDine has done anything wrong by receiving the annual fees as these were identified and agreed at the point of application.

#### The investment with Company A

Stephen McDine has confirmed that after an initial investment into the bond which was written in trust that no further funds can be added. I've been given a copy of the bond's key feature documents and see that under the 'How flexible is it?' section it says, 'You can't

invest any more money into your bond'. So, it's clear why a second bond was invested into with Company A when additional funds were available and to be added to the trust.

I don't think Stephen McDine did anything wrong when the second bond was invested into for the trust. Quite simply further investment couldn't be made into the original bond.

#### Advice given in 2017 and 2018

I have been given a copy of Stephen McDine's suitability letter dated 12 January 2017. Mrs R's objectives were to invest £20,000 which she didn't need to have access to. She wanted an investment with potentially better returns than savings and 'decided that planning your estate for your daughter would be assisted if you invested money into an investment bond'.

An investment bond with Company B is proposed and the letter continues;

'You have 2 bonds written in trust already with [Company A] for estate planning purposes, and you may instruct me to write this new bond under trust for [Mrs R's daughter]. However at present you want to retain control of the funds and a bond allows you that control.'

Under the 'Trust Arrangements' section of that letter it says in emboldened writing 'You do not want to write under the trust at this time.' Mrs R was recorded as the 'Owner/lives assured' of the bond.

In 2018 Mrs R had built up surplus funds of £10,000 and wanted to invest more money into one of her existing bonds. Growth was more important than income. Mrs R was advised to invest the further funds with Company B and Mrs R was again recorded as being the 'Owner/lives assured'.

I've seen copies of the key investor information documents that were provided, application forms and cheques Mrs R made payable to Company B and can see that Company B wrote to Mrs R confirming the investment in February 2018. Again, Mrs R is confirmed as the owner of the bond and also the life insured.

Mrs R has said that she asked for the additional funds to be added to the trust. But I think the above correspondence I have referred to doesn't indicate that was the case. I've seen nothing to suggest that Mrs R did want the funds invested within the trust. It was made clear that Mrs R was the owner and the life assured for both bond investments in 2017 and 2018.

And while Mrs R has said she was directed by the adviser, I don't think it's unreasonable to have expected her to have read those suitability letters prior to agreeing to the investments themselves. I also understand that Mrs R's daughter was present at meetings and helped her mother, so I don't think that Mrs R was in a vulnerable position or without any alternative support.

Taking all of the above into account, I don't think that Stephen McDine has done anything wrong. It follows that I don't uphold the complaint.

I know Mrs R feels very strongly about her complaint and I thank her for her efforts in bringing it. But I hope I have been able to explain how and why I have reached the decision that I have.

**My final decision**

My final decision is that I don't uphold Mrs R's complaint and won't be asking Stephen McDine IFA Limited to take any further action.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms R to accept or reject my decision before 6 September 2023.

Catherine Langley  
**Ombudsman**