

The complaint

Mr and Mrs M and Mrs H complain that Zurich Assurance Ltd, trading as Sterling, won't make a payment to a beneficiary as it's done in the past. Zurich says it needs to either make payment to the trustees' bank account, or the trustees need to complete a deed of irrevocable appointment.

Mr and Mrs M and Mrs H bring their complaint in their capacity as trustees of a discretionary trust. The complaint is brought on their behalf by a third party. For ease, I'll refer to everything as if it's been said by the trustees.

What happened

An investment bond is held in a discretionary trust with Zurich. In the past, the trustees have given partial surrender instructions and requested the proceeds are paid to a beneficiary's bank account. Zurich had always acted on those instructions. But, in or around September 2022, when the trustees requested a further partial surrender, Zurich wouldn't pay the proceeds directly to the beneficiary's account. It said it could only proceed with the surrender and payment if the trustees completed a deed of irrevocable appointment of beneficial interest. When the trustees complained, Zurich said its procedures had changed and it could only make payment direct to a beneficiary if the deed was completed. Alternatively, it could make payment to the trustees' bank account.

The trustees told us the deed would transfer tax liability from the settlor to the beneficiary, that there was no legal requirement for a deed to be completed, and there didn't seem to be a business need either. They want Zurich to act on its instructions, as it's done in the past; compensation for the beneficiary being unable to spend the money as planned; and for the additional legal fees the trustees have incurred.

Our investigator didn't recommend that the complaint should be upheld. She didn't think Zurich had acted unfairly and that it wasn't unreasonable for payment to be made to the trustees' bank account.

The trustees didn't agree and asked for an ombudsman to decide the complaint.

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 conclusion as our investigator for the following reasons:

Zurich previously made payments direct to the beneficiary's bank account. But it reviewed its procedures and introduced a new process. I don't find that Zurich is obliged to do something, just because it's done it that way in the past. Particularly where it reasonably decides its procedures need to be more robust. But I wouldn't expect any change in procedure to be unreasonably onerous on the trustees, unless it is required for regulatory or legal reasons.

Zurich says that, because the trust is discretionary, there are a number of potential beneficiaries. By making payment directly to one of those beneficiaries, there's a risk that individual wasn't entitled to the money. Whilst I think that risk is relatively small, because Zurich is taking instructions from the trustees, I agree that risk does exist. So I don't find it's unreasonable that Zurich changed its processes to mitigate that risk.

Zurich's surrender instruction form did include the option to "*pay a beneficiary direct to a bank account*". And the trustees had, as with past payments, chosen this option. So I can understand their frustration when Zurich wouldn't follow those instructions.

Whilst a deed of irrevocable appointment may not be a legal necessity, it can be advisable as it provides evidence of who assets have been transferred to and when they were transferred. So I don't find it unreasonable that Zurich now requires a deed to be completed before it will pay a beneficiary direct. And Zurich has prepared a deed, so I don't think what's required is particularly onerous for the trustees.

The trustees say that completing the deed will transfer any tax liability on surrender of the bond to on the beneficiary, rather than the settlor. I'm aware Zurich initially gave the trustees incorrect advice about this. But it did apologise for giving the wrong information. And, as the deed hasn't been completed, I don't find the wrong information has led to any financial loss which needs to be redressed.

If the trustees are concerned about the tax liability, the alternative is that the money can be paid to the trustees.

The trustees told us they don't have a bank account. And they've explained, in some detail, why they are unwilling to do so – in summary, because of the time, inconvenience and possible costs involved, and that it shouldn't be required.

But, when the trustees first applied to set up the trust with Zurich, they should have reasonably been aware of the need to set up a bank account. That's because the guidance which accompanied the application said:

"A trustee bank account should be established to receive any withdrawals".

I'm not persuaded that opening an account is particularly time-consuming and it shouldn't involve any costs. I fully understand the trustees' frustration that this hasn't been required in the past. But, for the reasons I've explained, I don't find Zurich's change in procedures to be unreasonable and I don't find it's treated the trustees unfairly.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H, Mr M and Mrs M to accept or reject my decision before 19 December 2023.

Elizabeth Dawes
Ombudsman