

The complaint

Mrs A complains that Tacklewild Limited (trading as Tacklewild Financial Services) failed to set up life assurance, that was for mortgage protection purposes, for her and her husband (Mr A) in an appropriate timescale. Because of this, the insurer declined a claim made under the policy as Mr A died after it commenced which meant there was a shortfall in cover.

Since referring the complaint to the Financial Ombudsman, Mrs A has been represented by a third-party firm. But, for ease of reference, I'll only refer to Mrs A in my decision.

What happened

The background to this complaint is well known to both parties and so I'll only refer to some key events here.

Mr and Mrs applied for a mortgage on 30 January 2018 which, I understand, completed at the end of March 2018. Following this, an application for life assurance was submitted by Tacklewild on 9 May 2018 for Mr and Mrs A. The application was for £405,000 of cover for a monthly premium of £86.27.

Because of the health conditions Mr A disclosed in the application, the insurer required information – a questionnaire - from his GP to underwrite the policy. This wasn't received by the insurer until 21 November 2018. The insurer reviewed the questionnaire and decided terms could be offered but, to proceed with the application, they would need Mr and Mrs A to complete a declaration of health (DoH) form. This was because of the amount of time that had passed since the application was originally submitted – so they needed Mr and Mrs A to confirm there hadn't been any significant changes in their health.

The insurer emailed Tacklewild on 12 December 2018 providing a link for the DoH form to be completed. Mrs A called the insurer on 20 December 2018 and explained their adviser was having some difficulty opening the email. So, the insurer forwarded Mrs A the email they'd sent Tacklewild and explained a 'wet signature' was required on the DoH form but they could accept a scanned copy of it.

Mrs A sent the DoH form back on 23 December 2018 but this was blank. Mrs A then sent another DoH form to the insurer on 2 January 2019 but this contained electronic signatures with a separate page attached that included scanned wet signatures. In this form, Mr and Mrs A told the insurer they'd applied for cover with another insurance company since the original application was completed but details weren't provided.

The insurer couldn't accept this DoH form so they asked Mr and Mrs A to re-sign and re-date it. A correctly signed DoH form was received by the insurer on 17 January 2019. The insurer then asked Mrs A on 23 January 2019 for details about the application for cover that they'd made elsewhere.

Mrs A responded the same day saying they hadn't applied for cover elsewhere. But she said another agent, who was "pushy", put through an application even though they'd advised him that their adviser was dealing with this application. Mrs A confirmed they had existing cover

in place, provided details of the policy, but explained this would be cancelled upon the new policy being set up.

Mr A sadly died on 25 January 2019.

The Tacklewild adviser called the insurer on 29 January 2019 enquiring about the policy. He said he thought the policy went live the previous week but he'd gone on to a portal and wasn't sure what he needed to do, so he asked the insurer to check. The insurer said terms had been issued that day and so it was ready to start. The adviser asked for this to happen and confirmed Mr and Mrs A were happy with the increased monthly premium cost (£137.28). The insurer said a welcome pack would be sent to Mr and Mrs A.

A claim was made under the policy but the insurer declined it as they said Mr A died before cover commenced. Mrs A complained to Tacklewild in January 2022 about their role in setting up the policy. She said Tacklewild left her with a shortfall in cover after they'd arranged her mortgage, and that they should've advised her of this risk. Mrs A also thought Tacklewild ought to have arranged the life assurance to start at the same time as the mortgage. And so, had it not been for this delay, she would've been able to make a successful claim on the policy for her husband's death. To put things right, Mrs A wanted Tacklewild to pay the sum assured under the policy and compensation for the trouble and upset caused.

Tacklewild didn't respond to the complaint and so Mrs A asked the Financial Ombudsman to consider it. Our investigator didn't think Tacklewild had to do anything further. In short, she said:

- There was limited evidence available from when the policy was applied for, so she considered what – on balance – she thought was most likely to have happened.
- She noted that Mrs A says she was told by Tacklewild the life assurance application would start once the mortgage was in place. But there wasn't anything to evidence this and she thought it was most likely that the agreed priority was the mortgage application, not having a protection policy immediately in place.
- Mr and Mrs A signed the mortgage application which made them aware of the risk of not having sufficient cover in place. So, they had the appropriate information to make an informed decision about proceeding with the mortgage application without having a protection policy in place at the time.
- She noted Mrs A says she had to chase Tacklewild to start the life assurance application after the mortgage completed. And that, even though Tacklewild initially told them they were too busy with other clients, Tacklewild proceeded with the life assurance application even though Mr and Mrs A had started one with another firm (which they cancelled). But, again, there wasn't anything to evidence this or to show Tacklewild delayed the policy application as Mrs A claims.
- If there was an agreement for Tacklewild to arrange life assurance for Mr and Mrs A, then it seems unusual that their response was that they didn't have the capacity to take on the application.
- She noted Mrs A said she felt obliged to continue with Tacklewild's services, which resulted in the cancellation of the application started with the other firm. And that, had this not happened, this policy would've likely been in place before Mr A died. But she thought this was a personal decision and so Tacklewild couldn't be responsible for it.

- The terms of agreement between Tacklewild and Mr and Mrs A isn't available. So, she couldn't assume Tacklewild were required to fully manage the life assurance application once it was submitted to the insurer – especially as this isn't the usual process. Once an application is submitted to an insurer, it's the insurer's responsibility to process it within reasonable timescales.
- Tacklewild didn't have control over the insurer's consideration of the application, including how long it would take. But, even if Tacklewild had chased the insurer more, she wasn't sure it would've made a difference.
- The insurer initially dealt with Tacklewild but later directly with Mrs A. This was sensible in the circumstances as it was more time efficient, avoiding the insurer having to go through a third party. There also weren't any objections from Mrs A about this at the time and, if Mrs A had any queries or wasn't sure about something, she could still have referred these to the adviser. So, she didn't think Tacklewild made an error in allowing Mrs A to communicate with the insurer directly.

Mrs A disagreed and so the matter has been passed to me to decide.

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 want to firstly send my condolences to Mrs A. I know this will be a very difficult time and I don't underestimate her disappointment, or the financial impact, the claim being declined has had on her. I want to reassure Mrs A that I've given this matter, and everything she's said, careful consideration. I know this won't be the outcome she's hoping for but, for similar reasons as our investigator, I don't think I can fairly conclude Tacklewild is responsible for the delay in the life assurance policy being set up.

At which point I'd like to say that I've read and considered the whole file. But I'll concentrate my comments on what I think is relevant. If I don't mention any specific point, it's not because I've failed to take it on board and think about it, but because I don't think I need to comment on it to reach what I think is a fair and reasonable outcome.

Due to the time that's passed since the life assurance application was made, there is limited documentary evidence available. And, as I wasn't present at the time, I can't be sure what was discussed between Tacklewild and Mr and Mrs A. Because of this, I've had to reach my decision based on what I think is most likely to have happened.

There aren't any terms of agreement to show what obligations, if any, Tacklewild had in respect of setting up life assurance for Mr and Mrs A. The mortgage application did however set out what insurance was required as a condition of lending, it says:

"Insurance

You agree that it will be your responsibility to maintain payments on the Loan. Your payments will not be protected in the event of death, accident, sickness, unemployment or other similar circumstances. As a condition of your Loan, You must have adequate buildings insurance for the mortgaged property(ies) that You and/or others have provided as security for the Loan in place at exchange or conclusion of missives (for house purchase) and completion (for remortgages or Secured Loan) and ensure that they continue at all times to be insured.

You are not required as a condition of your Mortgage Loan or Secured Loan to have any other insurance but You might like to consider taking out insurance to cover circumstances that might arise, such as death, accident, illness or unemployment. Your payments will not be protected in the event of death, accident or sickness, unemployment or other similar circumstances unless you arrange your own insurance for this."

This was signed and dated by Mr and Mrs A on 30 January 2018. I think it was reasonable for Mr and Mrs A to have read this and, had they done so, they would've been aware of the risk of being underinsured in the event of one of the circumstances mentioned – including death - occurring unless they took out their own policy.

Mrs A says the adviser told them he would sort everything out and that life assurance would be arranged after the mortgage was completed as it wasn't a condition of lending. And that she had to chase the adviser after the mortgage completed because she hadn't heard anything but was told that he was too busy. Then, after contacting another firm to arrange life assurance, the adviser contacted her to say that he was starting an application.

As I've said, there isn't anything to evidence what was discussed at the time between Tacklewild and Mr and Mrs A. But I agree with our investigator that, if there was an agreement (even verbal) for Tacklewild to arrange life assurance, it would seem unusual for them to have said they didn't have the capacity to process an application before then later doing so – particularly as setting up the policy would've generated commission for the adviser. But if life assurance was a significant priority to Mr and Mrs A, and they didn't want to wait until the mortgage completed, then I think they could've highlighted this to the adviser. I think it's likely that, if they'd done so, the adviser would've submitted the application to the insurer sooner – and before the mortgage completed.

I've also taken into consideration that Mr and Mrs A's mortgage application was for commercial (buy to let) purposes. Therefore, while there are still benefits to taking out life assurance to protect against the capital owed, there is arguably a lower risk compared to mortgage applications for residential purposes. This is because a buy to let property will typically generate enough income to cover the required mortgage repayments whereas a residential property, naturally, doesn't. So, although I don't doubt Mr and Mrs A wanted life assurance as a way of financially protecting themselves, I think it's likely that the mortgage application was of a greater immediate importance to them at the time.

It follows that I'm satisfied Mr and Mrs A ought to have been aware of the risk of being underinsured. And, although life assurance is often set up at the same time or ahead of lending being agreed, this isn't a requirement and so I don't think I can reasonably conclude Tacklewild is responsible for any delay in the life assurance application being submitted.

Once the life assurance application was submitted to the insurer, it was largely outside of Tacklewild's control. This is because it was for the insurer's underwriters to decide whether they could offer cover and, if so, on what terms. I appreciate there was a significant delay in the insurer obtaining the medical information they required to make their underwriting decision. But while this was of no fault of Mr and Mrs A, I likewise don't think I can fairly hold Tacklewild responsible for it either. The insurer regularly chased the GP surgery for this information. So, even if Tacklewild contacted the insurer about the application during this period, I think it's unlikely it would've made a difference.

Following the insurer confirming cover could be offered to Mr and Mrs A subject to the DoH form being completed, Tacklewild had difficulties opening the email they received containing it. It's unclear why they had this difficulty but IT problems do happen and so I don't think it

would be fair to attribute the claim being declined – because the policy commenced four days after Mr A's death – solely to this. Given the IT problem, I think it was appropriate that Mr and Mrs A dealt directly with the insurer in providing the DoH form to set up the policy. Unfortunately, there were issues with the DoH not being correctly signed. As Tacklewild weren't involved with the completion of the DoH form I don't think they can be held responsible for the further delays. That said, if Mr and Mrs A required any assistance with completed the DoH form then they could've contacted Tacklewild about it at the time. I can't see that this happened.

Upon the insurer's requirements being met, new terms were issued on 29 January 2019. The Tacklewild adviser called the insurer the same day to query the policy application as he wasn't sure what further was needed. He then asked the insurer to start cover immediately, confirming Mr and Mrs A were happy to proceed. I therefore don't think Tacklewild caused delays in setting up the policy after the application was submitted to the insurer either.

I'm aware that Mrs A has said that they felt obliged to continue with Tacklewild's services even though another firm had already started an application for life assurance. While I sympathise with the unfortunate position Mrs A now finds herself in, and why she feels a policy may have been in place before Mr A died had they continued with the application with the other firm instead, they weren't obligated to use Tacklewild if they didn't want to. So, although I appreciate they may have felt pressured to do so as way of maintaining their relationship with Tacklewild, this was a personal decision they made. And there wasn't anything preventing Mr and Mrs A continuing with the life assurance application with the other firm at the time if they wanted. So, I don't think Tacklewild is responsible for Mr and Mrs A's choice to use them instead.

On a final note, I understand Mrs A is dissatisfied Tacklewild didn't inform them that the 90-day free life cover had expired during the application process. Although I appreciate the expiration of this free cover meant Mr and Mrs A were underinsured, I don't think I can reasonably say there was a failing on Tacklewild's part not to inform them about this. This is, firstly, as I can't be sure what terms of agreement were in place - so I don't know whether Tacklewild were obligated to provide ongoing advice. And, secondly, even if Mr and Mrs A were informed about the cover expiry then I'm not sure what difference it would have made. This is because, while Mr and Mrs A had the option of seeking alternative cover, I'm not persuaded they would've done so. I say this as Mrs A has explained that they felt obligated to use Tacklewild's services in acquiring life assurance to maintain the relationship. So, I think it's more likely than not that they would've continued with the same life assurance application even if they'd been made aware the free life cover had expired.

I realise Mrs A will be disappointed by the outcome I've reached. But, for the above reasons, I don't think Tacklewild is responsible for the delay in the life assurance policy being set up. So, I'm not directing them to take any action here.

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 A to accept or reject my decision before 14 December 2022.

Daniel O'Dell
Ombudsman