

The complaint

The estate of Mr N complains that Key Solutions Mortgages Limited failed to accurately obtain information from the late Mr N when setting up three insurance policies for him.

What happened

In July 2017, the late Mr N took out a level term assurance (“LTA”) policy, a decreasing term assurance (“DTA”) policy and an Increasing Family & Personal Income Plan (“FIB”), following advice received from KSML.

The estate of Mr N made a claim on the policies following Mr N’s death in 2023. However, the insurer declined the claims as the answers given in Mr N’s health questionnaire, completed at the time of taking out the policies, didn’t match his medical records obtained from his doctor. The insurer explained that only smoking had been disclosed in the application, yet prior to the policy, Mr N had been diagnosed with diabetes and was prescribed insulin to control this. It said he had also been prescribed medications to treat his blood pressure and cholesterol and he was having regular monitoring for these conditions. In addition, the insurer said he was asthmatic and underwent annual check-ups.

The insurer contacted the estate in March 2023 to notify it of the misrepresentations and explained that in these circumstances it was entitled to cancel the policies from when they started and refund all the premiums paid. Before doing so, it asked the estate for an explanation to the incorrect information being provided.

The estate then provided the insurer with a testimony from Mr N’s son explaining that it was him who gave the answers to the medical history and not his late father. Regardless, the insurer decided to cancel the policies and refund the premiums paid.

The estate then complained to KSML as it felt the policies had been mis-sold due to it accepting answers from Mr N’s son. The estate said KSML ought only to have accepted answers from the Mr N and if it had done, the health questionnaire would have been completed accurately.

KSML considered the complaint but didn’t uphold it. In summary, it said that the advisor who conducted the health questionnaire over the phone confirmed that Mr N was present when the questions were asked. It also said that it was its policy that such calls were conducted exclusively with the life assured, as even close family members are unlikely to know the intimate details of an individual’s full medical history.

The estate of Mr N didn’t accept KSML’s findings as it says KSML didn’t provide a clear answer as to whether or not the late Mr N was present when the policies were taken out. And so it referred the complaint to our service for an independent review.

One of our investigators considered the complaint but didn’t find KSML was at fault. In summary, they said:

- KSML doesn't have a record of the call recording when the health questionnaire was completed because its systems at the time didn't record calls.
- KSML has confirmed the information in the fact find was provided by the late Mr N's son and they could see that this was explained in the suitability letter to Mr N, and it informed him that he needed to contact the adviser if the information contained within it wasn't correct.
- There is no evidence that the late Mr N didn't receive the suitability letter, so they felt he ought to have known to contact KSML if the information about his health was incorrect.
- They acknowledged that Mr N didn't pay for his premiums, but they didn't agree that this meant he didn't provide the answers to the health questionnaire.
- There isn't a rule that says the policyholder is the only person that can pay insurance premiums.
- They also noted that the insurer had sent the late Mr N a form to check the medical details he had provided on 20 September 2017, but the insurer has confirmed that this was not returned.

The estate of Mr N didn't accept the investigator's findings. In summary, it said:

- The complaint is strictly about the way the in which the policies were sold, not about any events or changes made after the policies were put in place.
- The insurer itself has explained that its clear the late Mr N didn't complete the application form and it was instead his son.
- KSML knowingly accepted answers from another person and this is a clear breach of proper practice, professionalism and duty of care.
- The recommendation letter sent by KSML states that the answers were given by the late Mr N's son.

The investigator considered the estate's comments and provided a further response explaining the following:

- They understood that the estate felt their initial view incorrectly commented on what happened after the policy was sold but explained that the insurer's contact with the late Mr N was important as it shows he was aware of the incorrect information that had been provided to the insurer and he didn't contact it.
- They looked at the letter the insurer dated 3 May 2023 which the estate had referred to. They explained that this doesn't say that it is clear that the information was provided by the late Mr N's son but rather that it accepted that this had occurred based on a testimony provided by his son. As the insurer wasn't present for the call, they didn't think it was in position to determine that the son answered the medical underwriting questions.
- The insurer said in the same letter that the late Mr N had a duty of care to ensure all the health questions had been answered correctly on his behalf. This implies the information could be provided on his behalf, but he was ultimately responsible for ensuring this information was correct.

The estate of Mr N remained dissatisfied with the investigator's findings and so the complaint 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.

Having done so, I've reached the same outcome as the investigator for broadly the same reasons. I'll explain why.

The crux of the complaint is that the estate of Mr N believes the answers given to the health questionnaire conducted over the telephone with KSML were not given by the late Mr N. It says that the late Mr N's son has confirmed that he provided the answers instead. As such, it feels KSML ought to be responsible for the insurer declining the claim.

Unfortunately there is no telephone record available and as such, it is impossible for me to say with any certainty who provided the answers to questions KSML asked. I acknowledge that it isn't disputed that Mr N's son completed the fact find questionnaire conducted on 18 July 2017 and so its possible he also completed the health questionnaire.

Despite me not being able to say with certainty who completed the health questionnaire over the phone, the fact remains that its not disputed that Mr N was aware of the existence of the policies before his death. This is supported by the fact that the estate submitted claims on these following his death. As such, regardless of whether Mr N gave the answers himself, or whether his son provided these on his behalf, it was his responsibility to ensure the answers that were provided were accurate.

I must stress that there are no rules explicitly saying an advisor must speak directly to the potential policyholder and I find it more likely than not that Mr N was aware that his son was helping him with the applications. I say this as he was provided with the relevant paperwork following his applications for the policies and I would have expected him to have contacted the insurer if he wasn't aware of the applications being made. So I don't think it would be fair or reasonable to make a finding that Mr N was able to discharge his obligation to ensure the information provided was accurate by allowing someone else to answer on his behalf.

The information provided to Mr N included a form from the insurer asking him to check the details provided regarding his medical details on 20 September 2017. Therefore, it was the late Mr N's responsibility to ensure the insurer had the correct information for him. Similarly, KSML sent Mr N suitability letter informing him that he needed to contact the adviser if the information contained within it wasn't correct. And I've seen no evidence to suggest Mr N contacted KSML either to correct the information provided. As such, I'm satisfied that KSML had made sufficient efforts to ensure that the information it was provided was accurate, regardless of whether it was originally provided by Mr N or his son, and that it gave him sufficient opportunity to correct any errors.

On a final note, I understand the estate of Mr N says that the policies were not paid for by Mr N, however, I don't think this has any relevance to the answers provided to KSML. As I've explained above, there is no suggestion that this policy was taken out without Mr N's knowledge and so I don't find the estate's point here persuasive.

To summarise, I can't say with any certainty who provided the answers to the health questionnaire over the phone due to there being no call recording available. Regardless, Mr N had a responsibility to ensure the answers provided were accurate and I don't think he could fairly discharge this obligation by allowing someone else to answer on his behalf. I'm also satisfied KSML followed up the telephone conversation with correspondence asking Mr N to contact it if the information provided wasn't accurate. As such, I don't think KSML has acted 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 the estate of Mr N to accept or reject my decision before 28 April 2026.

Ben Waites
Ombudsman