

The complaint

Mr and Mrs M complain that First Title Insurance Plc rejected a claim on their Policy of Title Insurance.

What happened

In March 2021, Mr and Mrs M were in the process of buying a new build property. The property was one of two houses being built on a plot of land.

Their solicitors advised them it would be better to wait for the local search to come in but asked them whether they wanted to do that or proceed without it and take out an indemnity policy. On 17 March 2021 Mr and Mrs M told the solicitors they wanted to proceed, with completion on 23 March, and take out the policy. Contracts were exchanged on 22 March, with completion to be the following day (23 March).

The solicitors received the Local Search on 23 March 2021 at 10.15am, but didn't tell Mr and Mrs M this. The purchase was completed at around 12.45pm after the other side confirmed receipt of the funds. The solicitors asked Mr M to pay the premium so they could activate the policy from that date. He confirmed to the solicitors that he had paid the premium in an email he sent at 1.21pm.

The solicitors issued the policy on 25 March, with the policy date backdated to 23 March 2021.

In June 2021 Mr M contacted the solicitors saying he thought they might need to claim on the policy. He had discovered the builders were building a third property next to theirs. He was also unhappy that there was limited visibility when driving out onto the road due to a high hedge, and said the developer was in breach of the planning permission in relation to this. The solicitors sent him documents relating to the property, including the Local Search, which he hadn't seen until then.

In November 2021 Mr M notified First Title of a claim on the policy regarding two issues – access to the property, and another house being built on the neighbouring plot.

First Title said it would not provide cover for either of these matters. Mr and Mrs M complained but First Title maintained its position. In brief, it says there's no cover for the following reasons:

- In respect of access to the property, the planning permission was shown in the search, but the developer's failure to comply with it would not have been shown unless it was the subject of a planning notice, which wasn't the case.
- Although a fresh planning application had been made, that was some months later. A search can't disclose planning applications that don't exist at the date of the search. So they can't claim for this.
- The solicitors had the search on 23 March 2021 and so were aware of the previous planning applications before the policy was issued. They acted on behalf of Mr and Mrs M who were imputed to be aware of what their solicitors knew, and the policy doesn't cover anything disclosed by the seller to the buyer or any previous search in

the seller's possession. In addition, Mr and Mrs M had seen a plan of the site, which showed a proposed third house on the plot next to theirs, so they were aware of this.

Mr and Mrs M brought the complaint to this service but our investigator didn't think it should be upheld. Mr and Mrs M disagreed and requested an ombudsman's decision.

I issued a provisional decision saying I didn't intend to uphold the complaint but as my reasons were different from the investigator's, I was giving the parties an opportunity to comment. I set out my reasons as follows:

The policy provides cover for any actual loss (which includes a reduction in the value of the property; any sums the insured has to pay as a result of a court order or settlement; or any loss incurred by the insured) as a result of any adverse circumstance that would have been revealed by the local search, or that existed at the policy date on the Local Authority Land Charges, Water Service Company and/or the Coal Authority registers.

It's designed to cover policyholders who buy a house before receiving the Local Search against something they would have been made aware of, if they had received the search. If, for example, the search showed up a valid planning permission for another property next door, this was only received after they completed their purchase, and they hadn't known about it, the policy might cover them for any loss caused by that.

But as with most insurance, there are conditions and limits on the cover provided. The policy is issued on the following basis:

The coverage for this Known Risk is provided based on the following assumptions:

1. The owner is not aware of any matter that would give rise to a claim under the policy.

And the policy includes the following exclusion:

First Title will not be liable under the policy in respect of any loss arising from or relating to:

...

4.4 any circumstances or allegations that are known to the Insured but not to First Title on or prior to the Policy Date;

Terms like this are not unusual in insurance policies, since the aim of insurance is generally to protect against a future risk, not something that the policyholder is already aware of when they take out the policy.

There were two issues Mr and Mrs M wished to claim for. I'll deal with each in turn. When doing so, I've taken into account the policy terms and the requirement for insurers to deal with claims promptly and fairly, and not to reject a claim unreasonably.

Access to the property

Mr M has explained that the concerns about access relate to restricted visibility driving out onto the road. He says the developer didn't comply with conditions in the planning permission relating to access. However, the search would only have disclosed whether there were any relevant planning permissions; not whether they had been complied with fully – unless this was the subject of a planning notice. There wasn't any such notice in this case. So the search would not have disclosed whether the developer was in breach.

That means this wouldn't be covered as it's not something that would have been disclosed by the Search.

The property on the neighbouring plot

Information about this was received by the solicitors on 23 March 2021, which is the date of policy. That means it was known before or on the policy date. I appreciate Mr M says they weren't told about it, but the solicitor was their agent, so effectively had the information on their behalf.

The policy covers Mr and Mrs M for things that would have been disclosed by searches, if they'd been received. What the searches showed was that planning permission had been granted in the past for three properties to be built. But that permission had expired. So at the point when they completed the purchase of the property, there wasn't a valid planning permission. This means even if they had received the search earlier, this would not have been revealed as an adverse circumstance existing at that date. It was only around May 2021 that the developer started work on that plot and – after objections were raised – submitted a fresh planning application.

What the search would have made them aware of was that the developer had previously sought permission for three properties. Mr M has said the builder told them that wasn't the intention – and the sales particulars only referred to two properties. But the solicitors had been sent copies of the previous planning applications by the seller's solicitors. And documents on the solicitors' conveyancing file include a plan of the site – signed by Mr and Mrs M – showing "Future plot 1" next to their property. So they were aware there was a possible third property to be built at some point.

The policy provides cover for any adverse circumstances the policyholders don't know about, but would have been made aware of if they had received the Local Search. The adverse circumstance in this case is the fact a third property was to be built, which Mr M says would have affected their privacy and reduced the value of their home. The Local Search wouldn't have made them aware that there was a valid planning permission for this, since there wasn't at that point. What it would have revealed was that the builder had in the past sought permission for another property – and so might have this in mind. And they were already aware of that, as their solicitors had previously been sent copies of the earlier planning applications and they themselves had seen a plan showing the proposed third house.

Taking all these factors into account, I think the decision to decline the claim in these circumstances was in line with the policy terms and was fair.

Replies to the provisional decision

First Title says it agrees with the provisional decision and has no further comments.

Mr and Mrs M don't agree and Mr M has made detailed comments. Some of the points are a repeat of those made previously but the additional points include:

- The work on the third property wasn't done by the same builders – it was a different builder.
- The planning decision of December 2021 confirms the earlier permission was still in force – it hadn't expired. But they weren't aware at the time they bought their house.
- He's not sure why the provisional decision refers to the plan of the neighbouring property as this wasn't mentioned by First Title and wasn't part of their decision.
- After they complained about the solicitors, the Legal Ombudsman said the solicitors' actions seem reasonable. While the policy was taken out on 25 March 2021 it was backdated to provide cover from date of completion.
- At no point was there any reference to a three property development.

- They signed the plan showing the third plot after they gave instructions to the solicitors to take out the policy. The plan showed plot 1 had previously been called plot 3. It referred to “Future Plot 1” but plot 1 had already been built and there was no planning permission for any more houses. This document doesn’t mean they were aware there would be a future development. They were never made aware of a third plot or of planning permission for a third plot.

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.

On the issue of access to the property, I’ve seen nothing to change my view that the search would not have disclosed whether the developer was in breach, so this wouldn’t be covered.

I’ve given further thought to the position regarding the property on the neighbouring plot, which is the focus of most of Mr M’s comments.

The position concerning the earlier planning permission seems contradictory. Mr M says the permission was still valid, though in correspondence in 2021 he said it had expired and this was confirmed by two different council officers. I’ve seen correspondence confirming that, though other documents indicate it was still valid. Either way, what is clear is that planning permission had been granted for three houses. And that information was in the conveyancing file, having been sent to Mr and Mrs M’s solicitors in February 2021.

Changes to the earlier permission approved by the council note that they concerned two of the three properties – plots 2 and 3. When the new application was submitted for the third house, the planning documents refer to this as being one of the three plots that were to be developed and note that “*The other two houses have been built*”. So it seems clear the intention was always to build three houses, with the remaining one to be built on plot 1.

I appreciate Mr and Mrs M were told their house was one of two. But as I’ve said, the documents in the conveyancing file show there were intended to be three. Mr M has asked why the provisional decision refers to the plan of the neighbouring property and says this wasn’t mentioned by First Title and wasn’t part of their decision. It’s relevant because it is evidence of what they knew at the time. It is consistent with the other documents in showing that plots 2 and 3 had been built, leaving the “*future plot 1*” to be built.

In its decision First Title referred to the plan, which accompanied the transfer deed and was signed by Mr and Mrs M, saying this shows they were aware of the intention for a new property to be built on Plot 1.

Mr and Mrs M and their solicitors were aware of plans to build three properties. Even if the builder who built their house had only built two, and even if the third house wasn’t being built at that time, I think the evidence shows they were aware of plans to build a third.

On this basis it remains my view that it was reasonable to reject the claim since the policy would not provide cover where the owner was aware of something that would give rise to a claim.

My final decision

My final decision is that I don’t uphold the complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr M and Mrs M to

accept or reject my decision before 4 August 2023.

Peter Whiteley
Ombudsman