

The complaint

Mr M's complaint is about a claim he made on his DAS Legal Expenses Insurance Company Limited ('DAS') legal expenses insurance policy.

Mr M says DAS unfairly declined his claim.

What happened

Mr M made a claim on his DAS legal expenses insurance policy for cover to pursue a legal claim against a Party Wall surveyor who was instructed by the owner of the land adjoining his in relation to the erection of two blocks of flats. Mr M says that this work caused considerable damage to his property, which the Party Wall surveyor didn't properly address.

DAS considered the claim and concluded there was no cover under the policy for the type of legal claim that Mr M wanted to bring. They said that whilst the policy did provide cover for contract disputes, this only applied to agreements which a policyholder has entered into for the buying or hiring of goods or services. In this case DAS said that Mr M hadn't entered into an agreement with the Party Wall Surveyor for buying or hiring goods or services because he hadn't funded these fees- rather they were paid for by the owner of the adjoining land.

Unhappy, Mr M referred his complaint to the Financial Ombudsman Service. Our investigator considered his complaint and concluded that it shouldn't be upheld. She said that even if the relationship between Mr M and the Party Wall surveyor could be called an agreement, there wasn't a contract for buying or hiring goods or services here as no payment had been made by Mr M in respect of this.

Mr M doesn't agree so the matter has been passed to me to determine.

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 won't be upholding Mr M's complaint for broadly the same reasons set out by the investigator. I'll explain why. The starting point is the policy terms. They cover:

"a dispute arising from an agreement or an alleged agreement which you have entered into in a personal capacity for a) buying or hiring in goods or services"

The question here is therefore whether Mr M entered into an agreement for buying or hiring of goods or services.

I don't need to determine whether the relationship between Mr M and the Party Wall surveyor amounts to an agreement or alleged agreement in law. That's because I'm not satisfied that Mr M either bought or hired those services in this case.

Mr M has made a considerable number of submissions in respect of this issue. I won't repeat them all here, but I can assure him I have read and understood them all. His main point is

that that hiring or buying can encompass money being paid by someone else on his behalf in exchange for the service or hire provided - in this case the payment has been made by the adjoining owner of the land. I've thought carefully about what he's said but I'm not persuaded by this argument. It might be right that the Surveyor appointed by the adjoining owner was appointed to look out for Mr M's interests but in order for him to have bought or hired those services, he would need to have paid for them in some way.

In applying this principle, I've applied the ordinary dictionary meanings of 'buying' and 'hiring' rather than any potential interpretations that might arise within the links Mr M has provided. I don't doubt that broader definitions of most terms can be found by seeking them out from different sources, but that's not in line with how The Financial Ombudsman Service would generally approach the interpretation of policy terms. Rather, we usually take the approach that where no specific definition of the word appears in the policy itself, we look to the ordinary dictionary meaning of it. In this case that means Mr M needed to have obtained the service in exchange for payment and importantly the policy terms require him to have entered into that agreement *himself* for that service.

Mr M has talked about there being an agreement in place between him and the Surveyor. As I've said above, I don't need to determine this issue because I'm not persuaded that Mr M either bought or hired the service provided in this case himself because he didn't pay for it. That's not to say he doesn't have a remedy against the Surveyor in law, but rather that his policy doesn't engage to fund the costs of such a claim.

My final decision

For the reasons set out above, I don't uphold Mr M's complaint against DAS Legal Expenses Insurance Company Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 31 October 2023.

Lale Hussein-Venn
Ombudsman