

## The complaint

Mr and Mrs H's complaint is about the refusal of a claim under a 'limited or no title guarantee' indemnity policy with Stewart Title Limited ("STL").

## What happened

Mr and Mrs H bought a property in January 2019. The property was not sold with full title guarantee, so they also took out the policy with STL, to provide indemnity in the event of anyone else establishing ownership of any part of the land they had bought.

In May 2019, Mr and Mrs H became involved in a dispute with a neighbour about the ownership of an area of land ("the disputed land") and so made a claim under the policy. Mr and Mrs H say the disputed land was within the boundary of the land they'd purchased. I understand it comprises a stretch of land, approximately 34.5 m long and 1.2 m wide, and is a public right of way.

STL initially refused the claim but after Mr and Mrs H complained it accepted the claim and appointed solicitors to assess the situation. Based on various plans and papers provided by Mr and Mrs H, the solicitors wrote to the neighbours to assert their ownership of the disputed land. I understand that in response, the neighbours suggested halving the disputed land, but this was declined as it was felt they had no legal right to the ownership of the land. I understand nothing more happened for a while, as the neighbours didn't respond again and took no further action. However, in January 2020 Mr and Mrs H became aware the neighbours had registered their property and included in that registration the disputed area of land.

The solicitors then changed their minds about Mr and Mrs H's case. They said that having considered the documents and plans that the neighbours had submitted with their registration application and the other information, the disputed land was not part of the land sold to Mr and Mrs H in 2019 and did form part of the neighbour's property. The solicitors said the registration had not altered the boundary of Mr and Mrs H's property, and this remained the same as when the property was first registered in 2012 and when they bought it in 2019. As the policy only covers disputes about land purchased by the policyholder, the solicitors and STL said there was no cover under the policy for this dispute.

One of our investigators looked into the matter. He did not recommend the complaint be upheld, as he was satisfied STL was entitled to rely on the solicitor's advice. He said STL had changed its mind about cover because of the additional plans provided in 2020 as part of the neighbour's registration and this information wasn't previously available to them. He said this included a 1971 conveyance.

Mr and Mrs H do not accept the investigator's assessment, so the matter has been passed to me. They are extremely disappointed and have made a number of points in support of their complaint, which I've summarised below:

- Insurance companies always try and avoid paying a claim, so STL getting its own legal advisors to provide biased advice, which it relied on to throw out this claim is

grossly unfair and unreasonable.

- The investigator said the solicitors are experts but they were appointed and paid for by STL. They are not independent and are not therefore experts. This is an *“extremely partial, biased and unfair position”* on which to base the outcome of this complaint.
- STL’s General Counsel was previously employed by the solicitors. An employee of the solicitors that had involvement in their case and is also head of the department dealing with their claim, was her line manager. Given the overlap between all of the staff members involved, it comes as no surprise that the claim has been refused based on the solicitor’s favourable advice.
- They took this policy out in good faith and do not have the means to counter this legal advice. Yet the investigator found against them, in very tenuous circumstances.
- The solicitors relied on a *“junior associate tracing a shape (of the Disputed Land) which was taken from a hand drawn and not to scale Land Registry document (dated 1971) onto a computer generated to scale Land Registry document dated 2019”*.
- Land Registry statutory guidelines clearly state *“This title plan shows the general position of the boundaries: it does not show the exact line of the boundaries. Measurements scaled from this plan may not match measurements between the same points on the ground.”* And *“The red edging on a HM Land Registry title plan is therefore not definitive as to the precise position of the boundaries”*. This appears to have been totally disregarded by STL, the solicitors and the investigator.
- The 1971 Land Registry conveyance, title plan and title deeds, which clearly show the disputed land belonging to their property was provided to STL at the outset of this matter in May 2019. These documents confirmed they are the rightful owners of the disputed land and this evidence was relied on by the solicitors when they wrote to the neighbours in 2020. As such how can the solicitors, STL and the investigator be so sure about the location of the exact boundary?
- And how can we be sure that the disputed land was not registered within the boundary of their property by the previous owner in 2012, when she registered the property?
- The 1967 Land Registry documents (for the purchase of the neighbour’s property) clearly show the disputed land did not form part of that property at that time.
- The neighbours offered to divide the disputed land, which they would not have done if they owned it.
- STL said they did not own the land but yet had asked the solicitors to reiterate the legal position they’d set out in July 2019 – which was that they did own the disputed land. This is contradictory.
- If they were able to afford to engage legal advisors, who may challenge STL’s solicitor’s position, how would this be dealt with?
- They made a subject access request for copies of all personal data, in order to bring their complaint here but received only their name, address and contact details, which was deliberately and maliciously obstructive.
- STL and its representatives were also rude, obstructive and discriminatory. They went out of their way to make things difficult for Mrs H in particular, with regard to her disability and language constraints, when she asked for adaptations.
- They asked for confirmation of the claims review process but STL was vague and dismissive and couldn’t tell them how long the review would take.
- STL repeatedly threatened to invalidate the policy and sent them a copy of the policy document several times, even though they made clear they had a copy. This was deliberately insulting. The approach by one representative in particular meant the whole process was stressful and they were anxious and nervous as they had not done anything in breach of the policy.
- STL also said the solicitors would tell the neighbours they were no longer acting in the matter which was unnecessary.

- There was a pattern of behaviour from STL which showed it was trying to avoid meeting the claim.

As the investigator was unable to resolve the complaint, it has been passed to me.

### **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.

As with all insurance claims, it is for Mr and Mrs H – as the claimants - to establish that they have a valid claim under the policy. In this case, that means Mr and Mrs H have to establish that the disputed land formed part of the land they purchased in 2019. However, in practice STL and most other title indemnity insurers, will pay for an assessment of the legal merits of the case, as they are in a better position to do so. STL did just that, instructing the solicitors, who have experience in such issues.

Solicitors are independent professionals subject to their own code of conduct and regulation. While I note what Mr and Mrs H have said about the relationship between employees of STL and the solicitors, there is nothing to suggest that they didn't form their own independent expert opinion (and I use the word "*expert*" given their expertise in property matters) on the facts of Mr and Mrs H's case. So while the solicitors were appointed and paid for by STL, that does not mean their advice should be disregarded.

Mr and Mrs H also raised concerns about the qualifications and experience of the employee that gave the advice which led to the claim being refused. There is no evidence that they were not suitably experienced or qualified to deal with this matter. So again, I see no reason that the advice should be disregarded.

Mr and Mrs H say the solicitors are wrong and that they have clearly shown their ownership of the disputed land by virtue mainly of the 1971 conveyance. It seems to be agreed that the 1971 documents show the disputed land formed part of the property that Mr and Mrs H purchased. However, it is not agreed that it also formed part of the property they purchased in 2019. The solicitors said the plans in 1971 are different from those in 2019 and it shows the disputed land was not on the plans that accompanied their purchase documents. There's apparently no record of any conveyance of the disputed land to the neighbours but when the current owners bought their property in the 1980s, the solicitors say it was within their deed plan.

Mr and Mrs H say the property outlines on the various plans are not intended to be precise boundary lines and the way they are marked, by thick pen, means it is difficult to determine the extent of land comprising the property; and the lines may not represent the actual shape or size of the site. They therefore say that the title plan contained in the 1980s conveyance (of the neighbour's property) can't be relied on.

To be clear I can't be sure where the property boundaries lie and it is not within my remit to make a determination about that. I can only consider whether STL has acted fairly and reasonably and in line with its policy terms. I think it has.

While the title plans might not be precise in terms of measurements, they do show an approximation of the boundary of each property. The disputed land is, in my opinion, relatively clearly marked on the various plans available. And the shape and position of the boundary lines correspond with the local authority map of public footpaths. I am not persuaded that the solicitors' interpretation of these maps and plans was patently incorrect. They do appear to reflect what the solicitors have said, which is that while the disputed land

did once form part of Mr and Mrs H's property there seems to have been a change at some point and later it is shown as being within the boundary of the neighbour's property.

I can understand why Mr and Mrs H are unhappy that the solicitor's advice about ownership of the disputed land changed but that is not uncommon in legal matters, as more evidence becomes available or the existing evidence is reviewed. I note they say all the information was available at the outset, except the title plan submitted with the neighbour's application to Land Registry when registering their property in late 2019; and the solicitors created their own plan by tracing the outline of the property from the hand drawn and not-to-scale 1971 plans and imposing it again by hand onto a computer generated title plan for the neighbour's property. It compared all the different plans and maps and I am unable to determine that its method of doing so was wrong or means its conclusions are wrong.

It may be that the disputed land was never conveyed to the neighbours and there is a cause for a claim over ownership of it but that does not mean the claim would be covered under this insurance policy, which only covers indemnity where a third party is able to establish ownership over land purchased by the policyholder. As the evidence suggests it didn't form part of the land Mr and Mrs H bought in 2019 (even if it should have been) then it is not covered by this policy with STL. I do not therefore think STL has acted unfairly in refusing the claim.

Mr and Mrs H also say STL's position was not clear because they said they didn't own the disputed land but then also said the solicitors would write to the neighbours again to restate that they did own it. STL explained that it was asking the solicitors to put the best case to the neighbours but acknowledging privately that they did not own the disputed land. I am not persuaded that this was unreasonable.

Mr and Mrs H are also unhappy that the solicitors were intending to tell the neighbours they were no longer acting and feel this was unhelpful to their position. As they were not going to be acting under the policy, I am not persuaded it would have been unreasonable for them to tell the neighbour's representatives this. However, I understand it was agreed that they wouldn't, as Mr and Mrs H said they might want to instruct the solicitors privately. I think this was reasonable.

Should Mr and Mrs H provide any evidence that would counter the solicitor's advice (and this might include other legal advice) then the claim might be reconsidered. They question how such conflicting evidence would be treated. It is not uncommon for there to be conflicting expert evidence. If they have legal advice that says STL's solicitors are wrong, then their reasons for concluding this will be considered. Any new evidence would need to be considered by STL first.

Mr and Mrs H are also very unhappy with the way the claim was dealt with and their communications with one representative of STL in particular. Mr and Mrs H were clearly unhappy with the stance taken by STL but I have not seen any evidence that there was any deliberate attempt to make the claim or complaint process more difficult, as has been alleged; or of any unprofessional handling or communications. It did send a copy of policy terms and refer to terms in correspondence but I do not think there was anything untoward or unreasonable in it doing so.

Finally, I have no power to investigate whether STL dealt with Mr and Mrs H's subject access request properly. This is a matter for the Information Commissioner's office.

## **My final decision**

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H and Mr H to accept or reject my decision before 13 August 2021.

Harriet McCarthy  
**Ombudsman**