

## **The complaint**

Mrs B has complained that Acasta European Insurance Company Limited (Acasta) unfairly declined a claim under a deposit protection policy.

## **What happened**

Mrs B wanted a garden studio built at her home. A company quoted for the work but said nothing further could happen, including applying for planning permission, until Mrs B paid the deposit. Mrs B paid a 25% deposit and, shortly after this, the company applied for planning permission. A couple of weeks later, the company told Mrs B that it had ceased trading and told her to start the process to recover the deposit under the deposit protection policy it had provided as part of the agreement to carry out the works.

Mrs B contacted Acasta to make a claim. Acasta declined the claim because it said planning permission was still pending. When Mrs B complained, Acasta said planning permission needed to have been granted at the time the policy commenced and as it hadn't been granted until after that time, no claim could be made under the policy.

When Mrs B complained to this service, our investigator upheld the complaint. She said the policy wording wasn't clear that planning permission needed to have been granted by the policy inception date. She said Acasta should deal with the claim.

As Acasta didn't agree, the complaint was referred 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.

Having done so, I uphold this complaint. I will explain why.

The policy said:

*“On inception of this policy you the customer accept that no protection will be provided where planning permission has not been granted (if planning permission is required). No protection will be effective, if a written contract for the full works to be earned out has not been provided by the member company.”*

Acasta declined the claim because it said the policy required customers to already have planning permission at the time the policy was first taken out. At the time the policy was taken out Mrs B didn't have planning permission. Planning permission was granted about six weeks after the policy started and after the garden studio company ceased trading.

Looking at the wording of the policy, I think it was unclear. Acasta has said the wording meant that planning permission needed to have been granted when the policy was first taken out. However, Mrs B has said she didn't understand it in that way. She said:

*“I accepted the terms and conditions that protection would not be provided for a project that fails to be granted any required planning permission. Acceptance of those terms and conditions is the only thing date-specific to 'inception of this policy'. At no point does the quoted clause say that planning permission had to have been granted by that date, too...”*

From what I've seen, I think Mrs B's interpretation was reasonable. I think the policy wording was ambiguous. I don't think the wording “*On inception of this policy...*” clearly related to the timing of the granting of any planning permission. In the context, I think it could reasonably be interpreted as simply meaning that the customer needs to accept the terms and conditions at the start of the policy. But, I don't think it was clear that the planning permission itself needed to have been granted at inception of the policy. The wording also said: “*no protection will be provided where planning permission has not been granted*”. I think the use of a double negative can make it harder for a customer to understand what wording means. In my view, the phrase “*has not been granted*” is also open to interpretation because it could mean that planning permission has been turned down, rather than that it hasn't been applied for/ approved but, as was the case here, is then granted.

Where wording is unclear, we say that it is fair to take the interpretation that favours the party that didn't write it. So, based on everything I've seen, I think Acasta should deal with the claim for the deposit.

### **Putting things right**

Acasta should deal with the claim for the deposit without requiring planning permission to have been in place at the policy inception.

### **My final decision**

For the reasons I have given, it is my final decision that this complaint is upheld. Acasta European Insurance Company Limited should deal with the claim for the deposit in line with the remaining terms and conditions of the policy, without a requirement for planning permission to have been in place at the inception of the policy.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 27 July 2022.

Louise O'Sullivan  
**Ombudsman**