

The complaint

Mr and Mrs S' complaint is about a claim they made on their Financial & Legal Insurance Company Ltd ('F&L') legal expenses insurance policy.

Mr and Mrs S say F&L treated them unfairly.

All references to F&L include their claims handlers.

What happened

Mr and Mrs S made a claim on their F&L legal expenses insurance policy for cover to bring a claim against the seller of their property. They say the seller misrepresented that building regulation requirements had been complied with and that there were no outstanding building control issues to resolve in relation to an extension roof.

F&L considered the claim and concluded that it wasn't covered under the contract section of the policy because there was no prior agreement for construction work between Mr and Mrs S and the seller of their property. Mr and Mrs S complained to F&L about this decision and pointed out that the claim they were making wasn't for an agreement for construction work but rather a misrepresentation, which caused them financial loss.

F&L asked for further information and considered the claim again. This time they said the claim Mr and Mrs S were making didn't fall within the terms of the policy for the same reason given by the original claims handler and because the agreement between Mr and Mrs S wasn't an agreement for goods and services, as required by the contract section, so it wasn't covered.

Unhappy, Mr and Mrs S referred their complaint to the Financial Ombudsman Service. Our investigator initially upheld Mr and Mrs S' complaint. She said the exclusion F&L were relying on simply wasn't applicable in the circumstances and that F&L had misunderstood what was being claimed for. As such she said F&L should accept the claim and pay Mr and Mrs S £250 for the distress and inconvenience caused to them.

F&L didn't agree with the investigator's view. They said the claim doesn't amount to an insured incident under the contract section of the policy because the dispute is not about a contract for goods and services- it's about a contract for the sale of a property which isn't the same thing. The investigator revised her view in light of this. She said that F&L were entitled to decline Mr and Mrs S' claim on that basis, but that they should still pay them £250 for misunderstanding their claim from the outset. F&L agreed with the investigator's view, but Mr and Mrs S did not.

Mr and Mrs S say the policy summary they received suggests this sort of claim should be covered, the policy is inconsistent in how it determines cover within the property and contract sections so should be read in their favour, the claim could be argued to fall within the property section of cover and the sale of property could be considered a consumer contract, which is covered.

The investigator reviewed this but didn't agree. She said the summary of cover is subject to the full terms and conditions of the policy and the claim Mr and Mrs S are making doesn't appear to fall within those. She also said the property and contract sections of the policy were distinct and not intended to be read together for consistency. In addition, she said the claim Mr and Mrs S are making is for misrepresentation, which is a breach of contract claim that isn't covered by the policy because it doesn't relate to goods or services.

Mr and Mrs S don'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 intend to uphold Mr and Mrs S' complaint in the same way and for the same reasons set out by the investigator.

The starting point is the policy terms. The contract section of the policy says:

"4. Contract Disputes

We will pay the Costs and Expenses for the pursuit or defence of Legal Proceedings relating to an agreement or alleged agreement that an Insured Person has entered into a personal capacity for the buying, selling or hiring in of any goods or services. Provided that the amount in dispute is more than £250."

Like the investigator, I agree that the contract Mr and Mrs S entered into wasn't for goods or services- it was for the purchase of a property. The dispute itself is for breach of the representations made by the seller in the sale of that property to Mr and Mrs S. And whilst "goods or services" are not defined by the policy, I can't reasonably say these would extend to a contract for the purchase of a property when the policy has separate cover for property disputes. I think this is applicable to Mr and Mrs S' assertion that the sale of property could be considered a consumer contract. Even if it was, it wouldn't be covered for the same reasons I've set out here- namely that the contracts section of the policy applies to goods or services and not property.

Because the claim relates to Mr and Mrs S' property, I've also gone on to consider whether cover is available under this section of the policy. The property section says:

"11. Property Protection

We will pay the Costs and Expenses in relation to the pursuit of Legal Proceedings an Insured Person is able to pursue in respect of an Insured Property arising from a nuisance, a trespass, an unauthorised occupation or damage caused to the Insured Property by a third party. Provided that the amount in dispute is more than £250."

In this section the claim itself needs to be for damage caused to Mr and Mrs S' property by a third party. Whilst I appreciate that they say the extension roof itself is in poor condition and needs considerable work, the claim they intend to make isn't for damage to it, it's for misrepresentation by the seller for failing to comply with building regulations or ensure there were no outstanding building control issues to resolve. So, although the remedy they're seeking might be the same as if they'd made a damage to property claim, I can't say that the claim itself is one that falls within cover. In addition, the damage itself would've needed to be caused to their property. As things stand, the work to the extension roof was completed whilst still in the seller's possession, presumably by contractors. So, the problems with the work to it occurred whilst the property was in the seller's ownership. Because of this I can't reasonably say any damage was caused to Mr and Mrs S' property by a third party because

they didn't own it when the work took place.

For the sake of completeness, I agree with the investigator's view that the summary of cover Mr and Mrs S received is just that- a summary. The insurance itself is subject to the full terms and conditions applicable to it. And the property and contract sections of cover aren't intended to be read together; they are distinct sections so can't be interpreted interchangeably.

F&L have agreed with the investigator's view that they misunderstood Mr and Mrs S' claim initially and that they turned down cover for the wrong reasons. They accept they should pay £250 to compensate them for the distress and inconvenience caused. I agree with that for the same reasons set out by the investigator and take the view that the award is adequate in the circumstances.

Putting things right

Overall, and for the reasons I've set out above, I don't think the claim Mr and Mrs S are trying to make falls within any of the sections of cover in their legal expenses insurance policy. But I agree that Financial & Legal Insurance Company Ltd should pay Mr and Mrs S £250 for the distress and inconvenience caused by rejecting their claim for the wrong reasons.

My final decision

I uphold this complaint Mr and Mrs S' complaint and direct Financial & Legal Insurance Company Ltd to put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S and Mr S to accept or reject my decision before 4 December 2023.

Lale Hussein-Venn
Ombudsman