

## **The complaint**

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

Mr A says DAS were wrong to decline his claim and says that they should accept it and fund his legal costs accordingly.

## **What happened**

In this complaint I will only be addressing Mr A's claim for legal expenses insurance cover for a claim against his mortgage company.

Mr A's claim was for misrepresentation against the provider of a buy to let mortgage he obtained against a property he owns.

DAS considered his claim and declined it for a number of reasons. They said that claims in relation to mortgages were excluded, that Mr A hadn't notified the claim to them inside the reporting requirement contained within the policy terms and that legal action had already been taken by Mr A without their consent.

Mr A didn't agree. He said the claim he wanted to make against his mortgage company was for misrepresentation and this was covered by the policy. Unhappy with DAS' position, Mr A referred his complaint to the Financial Ombudsman Service.

Our investigator considered Mr A's claim and concluded it shouldn't be upheld. Mr A didn'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 A's complaint. Before I explain why, I want to recognise Mr A's strength of feeling about it as well as the underlying claim he wanted to advance with the benefit of cover from DAS. I don't underestimate the importance of this to him. But for the reasons I've set out below, I don't think cover is available to him under the policy.

The starting point is the policy terms. They say:

*"We will negotiate for the following:*

*i) You or you family's legal rights in a contractual dispute arising from an agreement or an alleged agreement which you or your family has entered into for:*

- The buying or hiring in of any goods or services; or the selling of any goods".*

As the investigator explained, we wouldn't consider the provision of a mortgage to amount to either the buying or hiring of a service pursuant to a contract. Rather a mortgage is a

borrowing by the person taking out the mortgage typically characterized by a debt to them in exchange for a legal charge over their property in favour of the mortgage company. The person taking out the mortgage then agrees particular terms attached to the debt like the term of the loan, the amount of interest payable and when they'll make repayments towards it. If the person taking out the mortgage doesn't comply with particular terms, the mortgage company can seek possession of their interest in the customer's property. This doesn't to my mind amount to a service. The price paid by the customer isn't for a service but rather for a loan of money, on which they pay interest in exchange. A contract for services is a more direct exchange. It applies where a contractor, such as a builder or cleaner agrees to carry out work for the customer in exchange for payment. There's usually no lending involved at all. So, I don't think Mr A's claim is capable of cover under this particular section of the policy.

Mr A feels the policy covers his claim because the contract section covers:

*"Your legal rights in a contractual dispute or for misrepresentation arising from an agreement or alleged agreement which you have entered into for the buying or selling of your principal home".*

The property that is the subject of Mr A's dispute with the mortgage company is not his principal home. Rather it is a buy to let property. As such I can't say it's covered by the policy.

Mr A has said that DAS have accepted claims for misrepresentation and the correspondence he's provided supports this. I've carefully considered everything he's sent but there's nothing in there that confirms his claim under this specific policy was accepted by DAS. Rather the correspondence I've seen supports that DAS appointed a firm of Solicitors to investigate the extent of cover available under the policy. This isn't the same as confirming that cover was available for his claim. So, I'm not persuaded by Mr A's submissions about this.

Overall and for the reasons I've set out, I don't think Mr A's claim was one that cover was available for under his DAS legal expenses insurance policy. As such I don't think it was unreasonable for DAS to decline the claim in the way that they did. And because there was no cover for the sort of claim Mr A was making, I haven't gone on to consider the other reasons DAS gave for declining his claim, because it makes no difference to the outcome of his complaint.

**My final decision**

I don't uphold Mr A's complaint against DAS Legal Expenses Insurance Company Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms A to accept or reject my decision before 20 February 2024.

Lale Hussein-Venn  
**Ombudsman**