DRN-5225651

The complaint

Mr C's complaint is about DAS Legal Expenses Insurance Company Limited's rejection of a claim under the legal expenses section of his home insurance policy.

What happened

In January 2024, Mr C contacted DAS to make a claim for cover for his legal expenses in a claim against the seller of a lodge he had purchased on a hire purchase agreement. Mr C says the seller misrepresented information that was critical to his decision to buy the lodge and so wants to take legal action against them.

DAS said that the policy excludes cover for disputes about the sale or purchase of a lease, tenancy or building, other than the policyholder's main residence. It says that as this was in effect a holiday home, it is excluded from cover.

Mr C does not accept that the exclusion applies. He says the lodge is for all intents and purposes a static caravan, as it has an axle and can be connected to a car tow bar to be moved around. He therefore says it is in effect a "*good*" rather than a building and, as such, should be covered under the section of the policy regarding contract disputes for goods and services.

DAS reconsidered Mr C's complaint but did not change its position. DAS said the structure was a static caravan made to look like a wooden cabin or lodge, and while it is capable of being moved, it is not a mobile caravan in the sense of a towing caravan. It said the site pitch fees also refer to "*main park caravans*" and "*lodges and chalets*" separately and Mr C's structure comes under lodges and chalets. In addition, DAS said Mr C had also purchased a lease on which to site the structure and the finance agreement he entered into prohibits it being moved in the first two years in any event. DAS said he structure Mr C had purchased is therefore a building.

As DAS had not changed its position, Mr C referred his complaint to us. He maintains that the structure is not a building, as buildings cannot be moved and it is irrelevant that it can be used as accommodation, as the exclusion does not mention this. Mr C also says the lease is irrelevant, as he could move the structure off the site. He wants cover to be provided and compensation for the trouble cause to him by the rejection of the claim.

One of our Investigato5rs looked into the matter. She did not recommend the complaint be upheld, as she was satisfied that DAS was entitled to rely on the exclusion it had to reject the claim.

Mr C does not accept the Investigator's assessment. Mr C has made a number of points in support of his initial complaint and in response to the Investigator. I have considered everything Mr C has said but have summarised his main points below:

- The Investigator's assessment is based on an incorrect interpretation of the relevant

legal principles.

- The Investigator's dictionary definition of a building conflicts with other dictionaries.
- Merriam-Webster dictionary website defines a building as "*a usually roofed and walled structure built for permanent use."* The static caravan is not a permanent structure and they'd usually have a lifespan of less than ten years.
- The Oxford English Dictionary definition is "*A thing which is built or constructed; esp. a large, permanently standing structure"*. His caravan is not a permanent structure.
- In any case, the Investigator's dictionary definition, in this case, is an error in law, as the definition of a building is long established in English law in the case of *Cardiff Rating Authority v Guest Keen Baldwin's Iron and Steel Co Ltd* [1949], in which the court outlined three criteria for determining whether a structure qualifies as a building: size, permanence, and physical attachment to the ground. He relies on this definition.
- This case also suggested that once a building is installed, it would only be removed by pulling down or taking to pieces, neither of which is required in the case of his caravan.
- The static caravan was brought onto site and not built on site, it has wheels and an axle and can be removed by attaching it to a vehicle or, indeed, by hand if required. Therefore, it does not require dismantling or pulling down.
- The structure is classified as a caravan under the Caravan Sites and Control of Development Act 1960.
- Section 13, paragraph 2 of the Caravan Sites Act 1968, implies that the size required for a structure not to be considered a caravan is a length longer than 20 metres, a width wider than 6.8 meters and overall height of the living accommodation measured internally floor to ceiling of not higher than 3.05 meters. His unit is smaller than this and the size of the unit therefore fits the requirements of the act.
- In similar cases, inspectors have consistently determined that structures like his caravan retain their status as caravans due to their inherent mobility, even if used for permanent residence.
- For instance, in a recent 2024 case involving the Lake District National Park Authority, an inspector concluded that the structure did not become a building simply because it was used for human habitation. Its ability to be moved was the decisive factor.
- The planning application for the site on which his caravan is located, supports the case that the caravan is just that and not a building. The application was made for the "*use of land for sitting of 40 No: holiday caravan pitches"* and makes no mention of any buildings. The application also says "*sitting*", which supports it being temporary.
- His finance agreement for purchase of the caravan does not mention buildings but specifically mentions that it is for the purchase of "*goods*", which are covered under the Consumer Rights Act 2015. This has been given little consideration.
- There is a general requirement for council tax to be paid on buildings in the United Kingdom. However, he is not required to pay council tax on this structure, which further indicates that the static caravan should be considered "*goods*" rather than a building.
- The rent of the pitch on which the caravan is sited is an entirely separate contract from the purchase agreement for the caravan itself. The lease terms do not affect the classification of the caravan under the insurance policy and should not have been considered in this context. Nor does this pitch agreement mention site opening times or rental values. This separate agreement is not in dispute or connected to the misrepresentation that occurred.

As the Investigator has been 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.

our rules: determination of a complaint

The ombudsman service was set up under section 225 of the Financial Services and Markets Act 2000 to resolve disputes quickly and with minimum formality. In this decision I can look only at M's individual case.

Complaints are to be determined by reference to what is, in my opinion as the ombudsman, fair and reasonable in all the circumstances of the case (section 228(2)). I am required to consider this complaint in accordance with our rules, which include:

DISP 3.6.4 R: "*In considering what is fair and reasonable in all the circumstances of the case, the Ombudsman will take into account:*

(1) relevant:

(a) law and regulations;
(b) regulators' rules, guidance and standards;
(c) codes of practice; and

(2) (where appropriate) what he considers to have been good industry practice at the relevant time."

The law is one factor which I have to take into account, but I am not required to make a decision which is in accordance with the law. If I don't think that it would be fair and reasonable to follow the law, I am free to reach a different decision, but I will explain my reasons.

Policy terms

Mr C's policy with DAS provides cover for various legal disputes. The section of the policy that both sides agree is relevant in this case is the *"contract disputes"* section, which says:

> *"What is covered*
>
> *Consumer disputes*
>
> *A contractual 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*
>
> *b. selling goods*
>
> *c. buying or selling your principal home."*

However, there are also a number of exclusions that apply to this section of cover. The one that DAS seeks to rely on says:

"What is not covered

A claim relating to the following…

c. a dispute over the sale, purchase, terms of a lease, licence, or tenancy of land or buildings (other than disputes arising from you buying or selling your principal home). However, we will cover a dispute with a professional adviser in connection with these matters."

The policy does not define "*buildings*" in the policy. I have to therefore consider what meaning should be applied to that word here.

An insurance contract is properly interpreted based on the understanding a reasonable person would have had at the time the contract was entered into. In reaching my conclusion about how the word "*buildings"* should be interpreted and the understanding a reasonable person would have had about the cover provided at the time the contract was entered into, I have taken into account, the ordinary every day meaning of a building, the relevant case law, including that provided by Mr C, and relevant legislation. Having done so, I consider DAS is entitled to reject the claim on the basis of the above exclusion. I will explain why.

Lease

Mr C entered a lease for the site, which also falls within the exclusion relied on.

Mr C says this is irrelevant but I am not persuaded that is the case. I say this because the legal claim he wants to make seems to largely focus on the representations that were made to him by the site owners about the occupancy rates and opening times and dates of the site itself. As far as I am aware, he is not alleging any defect with the lodge structure itself but rather that he would not have purchased it if he had known certain information about the site at the time.

However, even if I am wrong about this, I do not consider the claim is covered, as I think the lodge would reasonably be considered to be a building in the context of this policy for the reasons that I set out below.

Dictionary definitions

In the absence of a policy definition, I have considered the ordinary, everyday meaning of the word "*buildings".*

Merriam Webster dictionary says: "*a usually roofed and walled structure built for permanent use (as for a dwelling)."*

Collins Dictionary says: "*a building is a structure that has a roof and walls".*

Cambridge Dictionary says: "*a structure with walls and a roof*".

The Oxford English Dictionary says: "*A thing which is built or constructed; esp. a large, permanently standing structure".*

The lodge is a structure with walls and a roof, so meets most of these definitions. Mr C says it is not a permanent structure and has a life expectancy of around 10 years, so fails to meet this part of the definitions.

I think whether a structure is permanent is a matter of degree. The structure Mr C bought was pre-fabricated and capable of being moved but is not intended to be mobile in the sense that it will be used on the move. The structure was intended to remain on the site, to be used as a holiday home and let out. There seems to be no limit on the length of time the lodge was to be in position and the ability for it to move (when there is no intention to move it for some time) does not remove the significant of its presence in its intended position. It seems to me Mr C's structure was designed and intended to be in situ for the foreseeable future.

Having considered this carefully, I do think there would be a degree of permanence with a structure such as the one bought by Mr C, so it follows that I think the structure reasonably meets the dictionary definitions of a building.

Council tax

Mr C says he does not have to pay council tax on the structure because it is not a building. However, it is my understanding that council tax would be payable on the caravan if it is being used as a sole or main residence. I do not therefore consider that this establishes that it is not a building.

Case law and legislation

I have also considered the other evidence Mr C has provided around the definition of caravans and buildings. Mr C seeks to rely on various court cases, in particular, which concerned planning law and tax.

The case of *Cardiff Rating Authority and Cardiff Assessment Committee v Guest Keen and Baldwin's Iron and Steel Co. Ltd* [1949] 1KB 485 is helpful. In that case the court identified three criteria for determining if a structure is a building: its size; permanence; and physical attachment to the ground. The Court also stated that once a building is installed it would only be removed by pulling it down or taking it to pieces.

This approach was confirmed in more recent cases and in particular by the Court of Appeal in *Skerritts of Nottingham Ltd v Secretary of State for the Environment, Transport and the Regions (No 2)* [2000] JPL 1025, para 39, in which, applying the test set out in *Cardiff Rating Authority* case, the Court of Appeal determined that a marquee was sufficiently permanent so as to amount to a building.

Mr C also referred to a planning appeal which determined that a caravan had not become a building by virtue of being hooked up to utilities.

I have considered these cases and the criteria identified in them for determining if a structure is a building. Applying these criteria to this case, it seems to me the size of the structure Mr C bought would not mean it should not be classed as a building. And, as above, I think there is a degree of permanence, as it is intended to be in situ for a significant time and I do not think the courts in any of these cases stated that, to be a building, the structure has to be in place in perpetuity.

In any case, I note that The Building Act 1984 says that for the purposes of the Act buildings means "*any permanent or temporary building*, *and, unless the context otherwise requires, it includes any other structure or erection of whatever kind or nature (whether permanent or temporary)".* And the Town and Country Planning Act 1990 contains a wide definition of building as "*any structure or erection*". So, a building can be temporary for the purposes of those Acts.

Whether it meets the requirements set out by the Court regarding physical attachment to the ground is arguable. I accept that it is unlikely the structure Mr C bought would meet this criteria.

I have also considered the case of *Smith* [1991] BVC 545 which considered VAT issues. The tribunal in that case determined that the structures in question were buildings, rather than caravans. The tribunal said: "*most people can easily recognise a building when they see it"* and that even a towing caravan becomes a building, albeit a temporary one, when its wheels are removed. I think that is a useful comment.

While the case law referred to by Mr C is helpful, as stated above I have to consider the fair and reasonable interpretation of the policy terms. I have not been provided with any evidence that there is a legal definition of a building in the context of a legal expenses insurance policy such as this one. And I do not think the case law overrides any reasonable understanding of the policy cover.

The lodge was described in the online claim form by Mr C as "*a holiday home*…". It was intended to be used as a holiday home to be sited in one place (not a touring caravan or vehicle as such). It is a structure made to look like a wooden lodge with a wraparound verandah. I think it meets the normal understanding of the word "*building*" (given the dictionary definitions) and most people would recognise it as a building when they saw it.

Having considered everything carefully. it seems to me that most people would reasonably consider that the purchase of a holiday home would fall within the exclusion and would not have in their minds the legal intricacies of definitions of buildings for planning and tax law purposes. and so in my opinion the reasonable interpretation of the policy term would be that this claim is excluded from cover.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 17 January 2025.

Harriet McCarthy
Ombudsman