

The complaint

Mr N complains that AmTrust Europe Limited mishandled his claim on a caravan insurance policy.

What happened

A manufacturer made a caravan in 2016 and Mr N bought it in October 2018. On about 25 October 2018, Mr N took out a caravan insurance policy under which AmTrust was responsible for dealing with claims.

In the summer of 2019, the caravan manufacturer went into a formal insolvency.

On 11 October 2019 - as Mr N towed it uphill - an oncoming car “side-swiped” his caravan. The car drove on before Mr N could get its registration plate. His caravan suffered damage. On about 25 October 2019 Mr N renewed his policy.

AmTrust instructed an expert who said the value of the caravan had been £15,000.00. He said that a repair would require certain parts which were no longer available. He estimated the cost of repair at £8,580.00.

AmTrust referred to a policy term that said that - in the case of unavailability of parts - it would pay the last known list price of the parts plus what it would have cost to install them. It offered £8,580.00.

Mr N complained to AmTrust that the damage was such that he could no longer use the caravan. He said AmTrust should pay the pre-accident value of his caravan.

AmTrust declined and sent a final response letter dated 6 December 2019. Unhappy with that, Mr N brought his complaint to us on 9 December 2019.

our investigator's opinion

Our investigator recommended that the complaint should be upheld. He thought that the term AmTrust was relying on wasn't fair and reasonable given the circumstances. He recommended that AmTrust should re-examine Mr N's claim without relying on the exclusion term, and if the claim meets all the other terms, to make an offer that reflects that Mr N no longer has use of his caravan.

my provisional decision

After considering all the evidence, I issued a provisional decision on this complaint to Mr N and to AmTrust on 5 November 2020. I summarise my findings:

I didn't find that AmTrust fairly applied the limitation term. I concluded that AmTrust should've paid the retail value of the caravan at the time of the damage. The expert's

valuation was £15,000.00 and Mr N hadn't challenged that, so I found that was the retail value immediately before the damage.

If AmTrust had paid that value less the £100.00 excess, it would've become entitled to the damaged caravan. As AmTrust didn't pay that value, Mr N could've disposed of the caravan. So I wasn't minded to find it fair and reasonable to direct AmTrust to pay for storage charges.

AmTrust's offer of £8,580.00 was in late 2019. I understood his reluctance to accept it in settlement of his claim. But I found it likely that AmTrust would've been willing to pay that amount "on account" while we dealt with the complaint. Mr N's email to us on 23 September 2020 indicated that – when Mr N asked – AmTrust was willing to make payment on that basis.

Neither Mr N nor AmTrust had confirmed that a payment was made and, if so, whether it was of £8,580.00 or – after deduction of the £100.00 excess - £8,480.00.

Subject to any further information from Mr N or from AmTrust, my provisional decision was that I was minded to uphold this complaint. I intended to direct AmTrust Europe Limited, provided that Mr N makes his caravan available for collection with all relevant documents, keys and codes, to pay Mr N:

1. insofar as it hasn't already paid him, £14,900.00 for his damaged caravan; and
2. simple interest at a yearly rate of 8% on the balance of £6,320.00 from 6 December 2019 to the date of payment. If AmTrust considers that HM Revenue and Customs requires it to withhold income tax from that interest, it must tell Mr N how much it's taken off. It should also give him a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Mr N disagreed with the investigator's opinion in part. He says, in summary, that:

- We told him earlier this year not to dispose of the caravan from storage, as it might be the insurance company's property, if the case went for him.
- He is still paying £30 per month for storage. He wanted to get rid of this expense.
- The insurance company should at least pay for the storage since the accident (£390).
- He would like some compensation for using hotels/static caravan for holidays instead of a Touring Caravan.
- For the hassle he has gone through this last year, compensation is justified because of their unreasonableness & unfairness in this matter and for dragging it out so long.
- He was offered but did not take any money from the insurance company.
- If the insurance company wanted to, (instead of paying any storage fees & compensation) they could leave the caravan with him.
- He asks whether my decision on the policy clause will prevent insurers using a similar clause in future.

- His caravan was insured for £16,000.
- £15,000 is not a fair market value for a caravan like his, with motor mover. He has sent us some sales details as at 9 November 2020.

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.

The Financial Ombudsman Service must take into account the general law and the policy terms. But it will consider whether it was fair for an insurer to rely on a policy term in each case.

The Financial Ombudsman Service deals with each case individually. I cannot say how future cases may be decided.

In Mr N's case, the policy schedule recorded that the value of the caravan (in October 2018) was £16,000.00. The policy wasn't an "agreed value" policy. So the caravan wasn't insured for £16,000.000 – it was insured up to its market value at the date of the accident (which happened in October 2019).

The value in October 2019 is not evidenced by Mr N's review of similar caravans on the market a year later in November 2020. In any event, asking prices are often higher than actual selling prices. So I place more weight on the prices set out in the trade guides.

The policy excluded the first £100.00 of each claim.

The policy had a term as follows:

"Settling Claims

1. The caravan

We will either pay the cost of repairing the caravan or, if the caravan is lost or damaged beyond economical repair, we may settle the claim as follows:

a New For Old Cover

If you suffer a total loss and the caravan is within five years of age from the date of manufacture we may replace the caravan with a new caravan of the same make and model. Your sums insured (as shown in the schedule), must cover the cost of a new caravan of the same make and model. You must be able to provide the original purchase receipt.

b Caravans Over Five Years Old

We will pay the retail value of the caravan at the time of the loss or damage (if shown in the current edition of Glass's Guide to Caravan Values or agreed by us)"

That term is about settling claims. One alternative settlement is to pay the cost of repair. The other alternative is that the caravan is lost or damaged beyond economic repair.

That term about settling claims doesn't contain any cross-reference to suggest that the cost of repair is subject to any other term in the event of unavailability of parts.

The policy doesn't contain any definition of "*damaged beyond economical repair*". And the term about settling claims doesn't contain any cross-reference to suggest that the unavailability of parts doesn't make a caravan beyond economical repair. In the absence of a policy definition, my view is that a caravan that cannot be repaired without parts that are unavailable is a caravan that is beyond economical repair.

The term about settling claims doesn't say how AmTrust will settle a claim for a caravan that was bought second-hand and insured for its second-hand value and damaged beyond economic repair before it's five years old. I consider that it would be fair to imply that the insurer would settle such a claim in the same way as if the caravan were five years old – that is to pay its retail value at the time of the damage.

The term on which AmTrust has relied is as follows:

"10. Where a claim for loss or damage results in the caravan or contents needing new parts and these are found to be obsolete or unobtainable, the claim will be limited to the last known list price of the part, together with the appropriate fitting charge."

I would characterise that term as a limitation clause. AmTrust's policy has it under the heading of "*General Exclusions*".

I accept AmTrust's statement that such a term is common in caravan insurance policies. But it's a significant limitation. So I've thought about whether it is clear enough in the policy document. On balance I consider that the lack of cross-referencing means that the limitation isn't clear enough in the policy document.

Even if it were clear enough, I don't consider that it would always be fair for AmTrust to rely on that term. For example, it wouldn't be fair to pay only the last known list price of a vital part that was cheap at that time but is no longer available so that the caravan can neither be repaired nor used.

Mr N's caravan suffered damage to the right-hand side.

I've seen that a well-qualified expert engineer carried out a desk-top review for a fee of about £62.00 plus VAT. He identified that repair would require the following parts:

*"NEARSIDE AND OFFSIDE AWNING RAILS
FRONT PANEL
FRONT PANEL DECALS
OFFSIDE REAR AWNING RAIL
OFFSIDE SIDE PANEL
HEATER FLU
WATER INLET
BATTERY BOX DOOR AND FRAME
SKIRT MOULDING SET
WHEEL ARCH
OFFSIDE DECALS"*

So I find that the damage included damage to the water intake and gas heater flue, which would hinder or prevent filling the caravan's water tank and the use of its heating. So the damage made the caravan unusable for its intended purpose of touring holidays.

The expert engineer said the following:

“we have calculated repair costs based on previous repairs that were carried out and would suggest total cost of the repairs to replace the front panel and side panel together with associated parts would be £7150 plus VAT approx.”

His report breaks that figure down as follows:

Bonding	£300.00
Sealing	£200.00
Engineers agreed labour charge	£2,310.00
Parts	£4,190.00
Carriage	£150.00

There's no further breakdown of the figures of £4,190.00 for parts or £2,310.00 for labour. The total of £7,150.00 plus VAT is an expert's approximation. It's based on *“previous repairs”* of unknown date, perhaps years before the caravan manufacturer last published a price list.

There's no evidence that the expert had access to any price list published by the manufacturer. So there's no evidence that the expert could state the last known list price of, for example, the offside awning rail or the heater flue or the water inlet for Mr N's caravan.

So I'm not satisfied that AmTrust's offer of £7,150.00 plus VAT (a total of £8,580.00) was compliant with its policy term limiting the claim to the last known list price plus appropriate fitting charge.

In any event, AmTrust's offer is based on the unavailability of parts. And I consider that such unavailability meant that Mr N's caravan was beyond economical repair and indeed beyond any repair. Over a year after the damage, neither Mr N nor AmTrust has said parts are available.

Overall I don't find that AmTrust fairly applied the limitation term.

I conclude that AmTrust should've paid the retail value of the caravan at the time of the damage. The expert's report included the following:

“Current Guide Value: £15,000.00 (Taken from Glass's Guide)”.

So I accept that the expert had consulted Glass's Guide to Caravan Values.

On 4 November 2019, Mr N sent an email including the following:

“I insured the Caravan for £16000 which I paid for it this time last year, and although that value would have reduced over that one year, I was hoping for somewhere near that value.”

Weighing up the expert's valuation with what Mr N said, I find that the retail value immediately before the damage was £15,000.00.

If AmTrust had paid that value less the £100.00 excess, it would've become entitled to the damaged caravan. As AmTrust didn't pay that value, Mr N could've disposed of the caravan. I acknowledge that on 6 October this year, in answer to a question from Mr N, the investigator said as follows:

“You cannot sell the Caravan for parts right now, as you are right in saying if the case settles, the Caravan could potentially be the property of the insurers.”

I don't think the investigator should've said that. But – as it was already October 2020 - I don't think it made much difference to the storage fees.

The fact remains that Mr N could've disposed of the caravan rather than incurring storage charges. So I don't find it fair and reasonable to direct AmTrust to pay for storage charges.

AmTrust's offer of £8,580.00 was in late 2019. I understand his reluctance to accept it in settlement of his claim. But I find it likely that AmTrust would've been willing to pay that amount "on account" while we dealt with the complaint. Mr N's email to us on 23 September 2020 indicates that – when Mr N asked – AmTrust was willing to make payment on that basis.

Neither Mr N nor AmTrust has confirmed whether the offer was of £8,580.00 or – after deduction of the £100.00 excess - £8,480.00. I find it likely that it would've been the latter. But Mr N says no payment was made.

In a case where the caravan was unusable and a total loss, I would find it fair to award compensation by reference to the pre-accident value of the caravan, with interest at our usual rate. I wouldn't find it fair to direct additional compensation for loss of use of the caravan or for the cost of alternative holidays. In any event Mr N hasn't provided enough detail of his holidays to enable me to assess such compensation.

I accept that – by a decision I've found unfair – AmTrust caused Mr N some extra distress and inconvenience at an already difficult time. I've thought about awarding compensation for this in addition. But I consider that most of the distress and inconvenience was to do with keeping Mr N out of money he should've had. And I consider that interest is a fair remedy for that.

Putting things right

So I find it fair and reasonable to direct AmTrust– provided that Mr N makes his caravan available for collection with all relevant documents, keys and codes within 14 days of his acceptance of this decision - to pay Mr N £14,900.00 insofar as it hasn't already paid him that amount.

If that happens then the caravan will be the property of the insurer. Mr N and AmTrust may be able to negotiate a lower payment after deduction of a "salvage" value on the basis that he retains the caravan. That is a matter for them to discuss before any further complaint is brought to us.

As AmTrust was only willing to pay £8,580.00, I find it fair and reasonable to direct AmTrust to pay interest at our usual rate from the date of its final response to the date of payment – but only on the balance between £14,900.00 and £8,580.00 – that is £6,320.00.

My final decision

For the reasons I've explained, my final decision is that I uphold this complaint. I direct AmTrust Europe Limited, provided that Mr N makes his caravan available for collection with all relevant documents, keys and codes within 14 days of his acceptance of this decision, to pay Mr N:

1. insofar as it hasn't already paid him, £14,900.00 for his damaged caravan; and
2. simple interest at a yearly rate of 8% on the balance of £6,320.00 from 6

December 2019 to the date of payment. If AmTrust considers that HM Revenue and Customs requires it to withhold income tax from that interest, it must tell Mr N how much it's taken off. It should also give him a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 1 January 2021.

Christopher Gilbert
Ombudsman