

The complaint

Mr W's complaint is about information given to him by Amtrust Europe Limited's legal helpline and the level of service he received from Amtrust in response to his complaint about this issue.

All references to Amtrust include their claims handlers.

What happened

Mr W has the benefit of a legal expenses insurance policy underwritten by Amtrust. He had a problem he needed help with concerning the occupier of the neighbouring property. His policy provided him with the benefit of a legal helpline he could contact in those circumstances.

When Mr W contacted the helpline, he was advised to send a letter before action to his neighbour to ask them to stop causing damage to his property as well as nuisance. He did this but his neighbour didn't comply with his request. He called Amtrust again when this happened who directed him to make a claim on his policy. The claim wasn't successful; Amtrust didn't agree to cover because they were advised the claim didn't have reasonable prospects of success, as required by the policy. Mr W accepted the position but remains unhappy about being directed to send a letter before action to his neighbour. He says that he wouldn't have written to his neighbour at all had he known his claim might not have been covered and that doing so has made things much worse for him with his neighbour. In particular, he says his neighbour is now piling more rubbish up against the wall of his house than he had done before and has obstructed his driveway on a number of occasions. Mr W is also unhappy with how his complaint was handled by Amtrust.

Amtrust said Mr W was correctly advised by the legal helpline that he needed to attempt to resolve things with his neighbour before taking legal action. They also said the legal helpline was operated by a firm of solicitors and that if he was unhappy with them he could refer the complaint to the Legal Ombudsman.

Our investigator considered Mr W's complaint. She said his complaint shouldn't be upheld. She thought that the advice Mr W was given about having to write a letter before action before pursuing an action against his neighbour was correct. Mr W wasn't happy with this so asked for an Ombudsman to look at things again.

I considered the complaint. I conveyed the following to both parties:

"I intend to uphold (Mr W's) complaint. It's clear from the first call he had with the helpline that he was immediately directed to send out a letter before action and led to believe that if his neighbour didn't comply with that letter his legal expenses insurance would take effect and solicitors would be appointed to act for him. It was also suggested that he would be expected to send out this letter and resolve things himself (on both this call and the subsequent one with the helpline) before cover would be afforded to him."

It's not a condition of cover that a policyholder tries to resolve things with the person they're in dispute with before making a claim so it's unclear why he was advised of this. And though such advice might sometimes be helpful, in this case he was directed to send out a letter threatening legal action without being told he might not have the benefit of insurance to pursue this at a later date.

(Mr W) has said that had he known there was a risk he wouldn't be covered to take things further, he wouldn't have sent the letter he was directed to. He also expressed that the letter caused his neighbour to behave more aggressively towards him, which has caused him distress. I'm persuaded by this given the account (Mr W) gave about his neighbour when he initially contacted the legal helpline.

I understand that (Mr W) also had problems making his complaint to Amtrust about this issue. In particular he says he was given a phone number to contact rather than an email address. He says he tried several times but wasn't able to get through to the case officer as she wasn't available. He's also said that (Amtrust) told him they would be sending him information about his complaint by email which he wasn't receiving. After trying to resolve this issue with (Amtrust) he says he contacted (his home insurer) to explain the problem. At this point he says (Amtrust) told him they had the wrong email address for him. All in all I think this would've been frustrating for (Mr W) and put him to some considerable inconvenience, particularly given his journey with Amtrust.

For those reasons I think Amtrust should pay (Mr W) £350 in recognition of the trouble and upset caused by the incorrect information given to him by the legal helpline and the difficulties he experienced trying to complain about this. It should be noted that I haven't directed Amtrust to accept (Mr W's)' claim because I don't think that's the correct course of action. Although I accept the call with the first advisor raised an expectation that cover would be provided, it doesn't follow that the claim should be covered. If things had happened as they should, Mr (W) would have been advised that his claim needed to be assessed under the terms of the policy before cover could be considered. So I think the correct remedy is to compensate Mr (W) for the trouble and upset he experienced as a result of being given the wrong advice."

I gave both parties 14 days to respond to my provisional findings. Mr W replied, accepting my findings. Amtrust have also responded. They said:

- They acknowledge Mr W wasn't informed that the terms and conditions of the policy had to be met in order for a claim to be accepted in his first contact with the helpline, but he was informed that if the letter before action wasn't complied with he would be directed to make a claim and that a solicitor would be appointed;
- Mr W received the benefit of his policy by way of a legal opinion from the panel firm they appointed once a claim was made and a further letter of advice on potential next steps; such as obtaining an expert report;
- Mr W's submission that he would never have sent a letter to his neighbour had he known there was a risk his claim wouldn't be covered is made with the benefit of hindsight. There was no indication the neighbour would become more aggressive in response to a letter before action. So, it doesn't follow he would have done something differently other than send the letter before action if he was told he might not have had legal expenses insurance cover.
- In relation to the service issues, they accept they inputted the incorrect character when recording Mr W's email address, but they took this off Mr W's handwritten claim form. It was only when Mr W later completed an electronic claim form that the correct email address came to light. He was however receiving some of their emails and once the problem was revealed Amtrust provided Mr W with all of the missing correspondence.

- On the issue of missed calls to the claims handler, call backs were arranged on each occasion that Mr W was unsuccessful in making contact. Amtrust say each time the claims handler called back Mr W wasn't available and voicemails were left.
- They are minded to accept my provisional findings but would like further comments on our expectation of the service provided by the legal helpline.
- They feel the compensation awarded exceeds what would normally be warranted in such circumstances.

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 remain of the view that Mr W's complaint should be upheld for the same reasons set out in my provisional findings.

I understand that the legal helpline is provided by a firm of solicitors. An insurer offering this kind of service is responsible for the advice given on it. As a Service, we can't usually comment anything to do with the quality of the legal advice provided but there are exceptions; for example where the advice given is obviously wrong or based on factual mistakes. Other examples include where an insurer accepts the advice was wrong or we had evidence from someone suitably qualified to say the advice was obviously wrong. We can also consider issues arising out of the service provided by that helpline.

An insurer has an obligation to provide policyholders with clear, fair and not misleading information. In this case, I think it failed to do this. Having listened to Mr W's calls with the legal helpline, it's clear to me he was led to believe he was obliged to send a letter before action to his neighbour before he could have the benefit of cover. That's not correct, and it wasn't necessary for him to do this. An insurer shouldn't be leading customers to believe they need to resolve disputes themselves before making a claim. It's not a pre-requisite of this policy or any legal expenses insurance policies I've seen in relation to property disputes. And if a customer is advised to send a letter before action by an insurer's helpline, they should also be told what the consequences of sending that letter are in order to allow policyholders to make up their minds, with the benefit of all the facts, about whether they want to do this.

The consequences of sending a letter before action in this case might have been that the letter could inflame relations further with Mr W's neighbour and, that any claim he subsequently made on the policy for help to pursue legal action might not be accepted because the policy is subject to a number of terms and conditions. That was the position Mr W found himself in so he should have been presented with the possibility of that happening before embarking down the route he did. I agree with Amtrust that Mr W was told that if the neighbour didn't comply with what was asked of him in the letter, Mr W could make a claim on his policy and a solicitor would be appointed. But that in itself was misleading. The appointment of a solicitor sounded very much like one would be appointed to act for Mr W in his dispute with his neighbour. In reality, the solicitor was appointed by Amtrust to assess Mr W's claim and confirm whether it was covered under the terms of the policy. If it was, only then would the solicitor act for Mr W. And in this case the solicitor didn't because the claim didn't fall within cover.

Amtrust have suggested that Mr W derived some benefit from his legal expenses insurance policy because he received an assessment of his claim and was given some advice on possible next steps- in the form of obtaining an expert's report that might help support his position. I don't think this absolves Amtrust of their failings in the circumstances of this complaint. And I don't agree that Mr W derived much benefit in a negative legal assessment

or the suggestion of spending more money on expert evidence that may or may not help him when he'd already been directed to threaten legal action he didn't have help to follow through on.

Amtrust have talked about what Mr W would have done if he'd been told he might not get cover under the policy. Mr W says he wouldn't have sent the letter before action but Amtrust feels this assertion is made with the benefit of hindsight. It's clear to me that Mr W had tried to resolve things with his neighbour by engaging other people- both a Fire Officer and his local Council. When this failed, he got in touch with Amtrust for legal help. He also made clear during the call that he didn't think his neighbour would take notice of anything that he sent to him. Taken together with his testimony, I'm persuaded that Mr W wouldn't have sent a letter before action if he didn't think he was going to get solicitors appointed to help him with his claim against his neighbour. That was what he was led to believe would happen after all. So, I remain of the view that he would have done something different if properly presented with all the options from the outset. It follows that Mr W is entitled to the trouble and upset I provisionally directed above.

On the general service issues complained of by Mr W, Amtrust have talked about the mistake in recording his email address correctly leading to no real detriment to Mr W. I don't agree. Amtrust could have checked the address with Mr W by telephoning him if they were unclear about his handwriting. Because they didn't, it inconvenienced Mr W to keep getting in touch to ask for communications. And I don't think that when Amtrust said they arranged call backs to Mr W every time he called, this meant those call backs were pre-agreed with him. Instead it seems they called back at random times when Mr W wasn't available. I think this could have been avoided if Amtrust had simply asked him when was convenient for him or given him some dates and times that worked for their claims handler rather than consistently leaving telephone messages.

Finally, it's been suggested that the award I've made is higher than our usual trouble and upset awards. We don't have a set amount for trouble and upset awards. Rather we base these on the impact they've had on the consumer and what went wrong in the particular circumstances of the case. I've done that here. In this case, Amtrust are responsible for Mr W receiving misleading advice that led him to do something, he otherwise wouldn't have done, resulting in his neighbour behaving more aggressively towards him and in a way that caused him stress, which he then couldn't get help with from Amtrust at a later date. This was compounded by the difficulties he faced in trying to complain about the issue. My award of £350 isn't excessive in those circumstances and takes account of the trouble and upset caused to Mr W in the round.

Putting things right

Amtrust should pay Mr W £350 for the trouble and upset caused to Mr W by their actions.

My final decision

I uphold Mr W's complaint against Amtrust Europe Limited and direct them to comply with my award set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 16 March 2022.

Lale Hussein-Venn
Ombudsman