

The complaint

Mr D and Mr S complain that Amtrust Europe Limited sent sensitive personal information to a third party without their consent.

All references to Amtrust include the actions of its appointed agents.

What happened

Mr D and Mr S made a claim on Mr D's father's legal expenses policy, to support a claim against their employer for discrimination based on sexuality. The insurer for the family legal claims section of the policy is Amtrust. During the claim Amtrust accidentally sent some information about the claim to Mr D's father's email address, rather than Mr D's. The claim information revealed Mr D and Mr S' sexuality, which Mr D's father hadn't previously been aware of.

Mr D made a complaint as he said his personal data had been shared without his consent and this had created an awkward situation in the home they all share, which had been very distressing for him and Mr S. He also made a complaint to the Information Commissioners Office (ICO).

Amtrust upheld his complaint. It said it accepted it had made an error by sending the information to the wrong email address. And it offered £100 compensation to apologise for the distress this had caused.

Mr D and Mr S didn't think this was enough compensation to recognise the impact the matter had had on them. They brought their complaint to this service.

Our investigator recommended the complaint be upheld. He recommended Amtrust pay an additional £100 compensation to make up for the distress its error had caused.

Mr D and Mr S didn't accept this. They said Amtrust had passed on information about a protected characteristic and had therefore breached the European Convention on Human Rights (ECHR). They asked for their complaint to be reviewed by an ombudsman.

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.

As an informal alternative to the courts, it isn't the role of this service to determine whether Amtrust has breached its obligations under the ECHR. That's a matter for the courts. Nor is it our role to punish a business for a data breach. Instead it's for us to identify if Amtrust got something wrong and decide if it's done enough to put things right.

Amtrust has admitted it made an error by sending information to the wrong email address, so it's clear it got something wrong here. It's offered £100 compensation to make up for this error, I've thought about whether this is fair in the circumstances.

I've considered what Mr D and Mr S have told us about the distress this error caused. I understand it has made the situation in the house they all share awkward. And it has been upsetting for them both as Mr D hadn't told his father about his sexual orientation. I agree this would have caused them both distress. Based on this, I agree with our investigator that Amtrust should pay an additional £100 compensation on top of the £100 already offered for this complaint. As this is in line with this service's approach to other cases of a similar nature.

I understand Mr D and Mr S feel they should be awarded a greater amount, due to the fact their sensitive personal data has been passed on without their consent. But I can only consider the impact of the error Amtrust made, rather than deciding if there has been a data breach, as that is a matter for the ICO. And based on everything I've seen, I consider this a proportionate award in the circumstances.

My final decision

For the reasons I've given, I require Amtrust Europe Limited to pay Mr D and Mr S an additional £100 compensation, in addition to the £100 it has already offered.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D and Mr S to accept or reject my decision before 3 June 2022.

Sophie Goodyear
Ombudsman