

## The complaint

Mr D has complained that Amtrust Europe Limited (Amtrust) unfairly turned down a claim on his guaranteed asset protection (GAP) policy.

Reference to Amtrust includes its agents which administer the policy on its behalf.

## What happened

Mr D's car was damaged in an accident that wasn't his fault. A solicitor helped him in pursuing his claim against the other driver's (the third party) insurer. Eventually the third party insurer settled Mr D's claim on the basis that his car was a total loss, although Mr D kept the salvage.

Mr D made a claim for the difference between the third party insurer's settlement and the purchase price of his car on his GAP policy. Amtrust turned down his claim. It told Mr D that his car hadn't been deemed a total loss as required by the policy but was repairable.

Mr D brought his complaint to us. I issued a provisional decision on 1 March 2022. For ease I've copied the relevant extract below. I said:

*"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.*

*In bringing this complaint and in response to our investigator's assessments of it Mr D's made a number of detailed points. I've considered everything on file carefully. But in this decision I don't intend to address each and every issue raised and instead will focus on what I see as being the key matters in order to arrive at a fair outcome.*

*Amtrust initially declined Mr D's complaint because it said his car hadn't been deemed a total loss and was repairable. But I don't find that argument persuasive. I've seen an entry on Amtrust's file that it spoke with the third party insurer who did, at one point, say that it was Mr D's solicitor who was pushing for a total loss declaration when the car might be repairable. And I note that this is something the solicitor disputed and suggested that the third party insurer had made a mistake. But, regardless of the earlier file entry I've seen that the third party insurer unequivocally confirmed that it had deemed the car a total loss after an inspection. It told Amtrust the car was "definitely a write off (total loss)".*

*Further, it's worthwhile noting that an independent engineer wrote an inspection report and estimated the costs to repair Mr D's car, before stripping it down, was approaching 70% of its market value. And that is a percentage figure that most insurers I'm aware of would deem a car to be a total loss at. So I'm satisfied that the third party insurer deemed the car to be a total loss and that Amtrust's arguments that didn't happen aren't supported by the facts.*

*Amtrust also refused Mr D's GAP claim because he hadn't claimed directly from his own motor insurer for the total loss of his car but instead, with the help of his solicitor, claimed from the third party insurer. I've seen that Mr D's GAP policy says that in order to be covered by it he needed to claim directly from his own motor insurer. As Mr D didn't do this, under the*

*strict terms of the policy, Amtrust was entitled to refuse his claim. But that doesn't mean it was fair for it to do so.*

*I've seen that Mr D contacted Amtrust about his claim fairly early on in the process. But I've seen no evidence that Amtrust advised him that it would only cover a GAP claim if he pursued a claim for the market value of his car through his own insurer. And I think that if Amtrust had made it clear when he told it about his GAP claim that he needed to claim for the loss of his car through his own insurer, he would have done so. That would have entitled Mr D to claim from his GAP policy. But because it didn't tell Mr D he needed to claim from his own insurer he lost the opportunity to do so before the other driver's insurer had actually settled the claim.*

*In those circumstances I don't think it's fair for Amtrust to refuse the claim. I think it's worth noting that Mr D gave Amtrust the opportunity to speak with the third party insurer. And there's no dispute that the third party insurer paid Mr D a fair settlement for the market value of the car. Neither is it in dispute that Mr D paid Amtrust a premium to cover exactly the sort of claim that he made. Nor have I seen any evidence which makes me think Mr D having claimed from his own insurer would have resulted in a different claim outcome. So, in those circumstances, I think the reasonable thing for Amtrust to do would be to consider the actions of the other driver's insurer as being those of Mr D's own insurer. In other words it should settle Mr D's claim as if the third party insurer's decision that the car was a total loss and the settlement it paid to him for that came from his own insurer. It should add simple interest to any claim settlement at a rate of 8% a year from the date of Mr D's claim on its policy to the date it makes payment to him.*

*It follows that I don't think Amtrust dealt with Mr D's claim fairly and reasonably. And I'm aware that its poor handling has been a source of distress and inconvenience for Mr D over a period of many months. To address that I think it should pay him £250 compensation."*

Neither Mr D nor Amtrust made any further substantive comments.

### **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 neither Amtrust nor Mr D objected to my provisional decision I see no reason to depart from it.

### **My final decision**

For the reasons set out above I uphold this complaint. I require Amtrust Europe Limited to:

- Settle Mr D's GAP claim, subject to the remaining terms and conditions of his policy, as if the third party insurer's settlement for the market value of his car came directly from his own insurer. It should add simple interest to its settlement figure at a rate of 8% a year from the date of Mr D's claim to the date it makes payment<sup>1</sup>.
- Pay Mr D £250 compensation for his distress and inconvenience.

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<sup>1</sup> If Amtrust considers that it's required by HM Revenue & Customs to take off income tax from that interest, it should tell Mr D how much it's taken off. It should also give Mr D a certificate showing this if he asks for one, so he can reclaim the tax from HMRC if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 13 April 2022.

Joe Scott  
**Ombudsman**