

The complaint

Mr and Mrs I's complaint is about a claim they made on their Amtrust Europe Limited legal expenses insurance policy, which Amtrust declined.

All references to Amtrust include their agents and claims handlers.

What happened

In October 2020 Mr and Mrs I submitted a claim to Amtrust under their legal expenses policy in relation to a property dispute with their neighbour. Amtrust referred the claim to one of their panel solicitors for a legal assessment.

The solicitors found that whilst some of the issues in relation to nuisance/trespass could achieve borderline prospects of success, the information provided suggested these were relatively minor so it was likely the legal costs to pursue them would quickly outweigh their value. As a result of this Amtrust declined the claim.

Mr and Mrs I complained about this and Amtrust's handling of their claim. Amtrust maintained their position in relation to proportionality but felt they could have done more to manage expectations in relation to claim for breach of covenant. To put things right they offered £150.

Mr and Mrs I referred their concerns to this service. Our investigator looked into it but didn't think Amtrust needed to take any further action. As this didn't resolve things, it has been passed to me to decide.

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.

I understand Mr and Mrs I's strength of feeling in relation to this complaint and the time they've invested into it. Whilst I have considered all the information provided by both parties, I haven't commented on it all. This isn't meant as a discourtesy but reflects the informal nature of our service.

Amtrust have a responsibility to handle claims promptly and fairly and they shouldn't decline a claim unreasonably.

The terms and conditions of the policy set out what is and isn't covered and form the agreement between Mr and Mrs I and Amtrust. The terms say cover is provided for:

“advisers’ costs to pursue a legal action for: nuisance or trespass against the person or organisation infringing your legal rights in relation to your main home.”

Mr and Mrs I's main concern was in relation to a breach of covenant by their neighbour. Whilst the policy doesn't specifically refer to breach of covenant being covered, Amtrust have said it would be covered if it occurs at the same time as an insured incident. So if it was being pursued at the same time as a nuisance or trespass for example.

The appointed solicitors provided a legal assessment having reviewed all the information Mr and Mrs I provided in relation to their claim. Having done so they came to the conclusion that there were borderline prospects of success in relation to some elements of the claim for nuisance/ trespass but found that it was likely the costs would outweigh the value of the claim as in their opinion, the issues were relatively minor.

Amtrust were entitled to rely on this advice to determine if to cover the claim. They are not legal experts and they explain in the policy terms and conditions this will happen. It says:

"An estimate of the costs to deal with your claim must not be more than the amount of money in dispute. The estimate of the costs will be provided with the assessment of your case and will be carried out by the independent adviser. If the estimate exceeds the amount in dispute, then we may decline or discontinue support for your case."

I'm aware there hasn't been a specific setting out of costs and so Mr and Mrs I aren't clear how it could be determined the costs would outweigh the value. The solicitor explained that without additional evidence the issues are relatively minor. In terms of the work they could provide based on the value of the claim, they'd only be able to send a couple of letters. Apart from this they wouldn't be funded to do anything more. So whilst there isn't specific numbers, I think they've explained by way of the example of what they could do for Mr and Mrs I based on the case so far given the value of the claim, and it's clear it wouldn't be proportionate to pursue as it wouldn't be proportionate for any further action such as court proceedings.

A proportionality clause is common in legal expenses insurance policies and I don't consider it to be unfair. Court action can be expensive. A privately paying customer wouldn't want to bear the cost if advised they will recover less than the amount they'd pay in legal costs. And we wouldn't expect a legal expenses insurer to either.

The legal assessment was undertaken by an independent firm of solicitors and the opinion was clear and reasoned so it was fair for Amtrust to rely on it.

I understand Mr and Mrs I have concerns the breach of covenant or depreciation in value in their house hasn't been explored by the solicitor. However, breach of covenant is only covered if pursued at the same time as a claim for nuisance/trespass. As Amtrust have declined the claim due to proportionality in relation to these issues, breach of covenant isn't something that can be pursued at this time.

Amtrust have left it open to Mr and Mrs I to submit further evidence. I note the legal assessment made some suggestions for recording incidences/ evidencing damage to support the claims. If this was something Mr and Mrs I have now done, they can provide this for a further review to see if it changes anything. This would include any evidence of the depreciation in value of their property.

Amtrust advised that Mr and Mrs I could obtain their own legal assessment, if it was supportive of their claim they would arrange for a barrister's opinion which could lead to the claim being met if the barrister also supported their case. I think this is reasonable and is in line with what I'd expect them to do.

Overall, I think Amtrust have declined the claim fairly and in line with the policy terms and conditions.

Amtrust's handling

Amtrust have accepted they should've managed Mr and Mrs I's expectations better and have offered £150 in recognition of the distress and inconvenience caused. I appreciate there was some confusion over whether a breach of covenant claim was covered under the policy. Amtrust could have been clearer with the solicitors about this but they recognised this and later provided clarification on the matter. I think this fairly reflects the impact on Mr and Mrs I for the lack of service provided.

My final decision

My final decision is that Amtrust Europe Limited should pay Mr and Mrs I £150, if it hasn't already done so, for the distress and inconvenience it caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr I and Mrs I to accept or reject my decision before 1 August 2022.

Karin Hutchinson
Ombudsman