

The complaint

Mrs F complains about Amtrust Europe Limited's handling of her claim for legal expenses insurance (LEI).

Where I refer to Amtrust, this includes their agents and claims handlers.

What happened

The detailed background to this complaint is well known to both parties. So, I'll only provide a very brief overview of some of the key events.

Mrs F had the benefit of insurance for certain legal expenses which was provided by Amtrust. She made a claim on her policy in relation to a dispute between her and a business that had completed work on her home. The company was demanding payment from her and she felt the work was of a poor standard.

Amtrust asked one of their panel solicitors 'J' to assess the claim. The claim was initially accepted before Mrs F was required to provide a further expert report. J had advised that without that report, the claim didn't have the required prospects of success. Mrs F obtained the report and the claim progressed.

J then asked Mrs F to obtain quotes for the costs involved in the remedial work to put things right at her home. Once this information had been provided, J had concerns that whilst the legal claim may be strong, they weren't sure the third party would be able to pay any award a court might make. Ultimately due to these concerns they concluded that the claim no longer had reasonable prospects of success.

Amtrust withdrew any further funding based on the advice from J. Mrs F complained. She was unhappy with a wide range of issues surrounding the handling of her claim. Amtrust responded. Overall, they felt they'd handled the claim correctly. But they did acknowledge that some information Mrs F had provided to them wasn't passed on to J as it should have been. They didn't feel this impacted the outcome J had reached, but they did offer £250 compensation for this.

By this stage Mrs F had referred her complaint to our service. One of our Investigators considered the complaint but didn't recommend it should be upheld. In a broad summary she felt Amtrust had fairly declined the claim. She said much of Mrs F's dissatisfaction was with J which wasn't something she could comment on and that the compensation already offered was fair.

Mrs F disagreed and asked for an Ombudsman to review her complaint.

In July 2022 I issued a provisional decision in which I said:

"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've reached a slightly

different outcome to that of our Investigator. So I'm issuing this provisional decision to give everyone a further opportunity to comment before finalising my decision.

Mrs F has made detailed submissions in support of her complaint. These include a 200 page document detailing the timeline of events and communication along with 39 individual points and issues she has with Amtrust's complaint response. Our Investigator has already provided a detailed and lengthy response.

I've read and considered everything Mrs F has sent in, but I won't be responding in similar detail. So if I don't mention a particular point or piece of evidence, it isn't because I haven't seen it or thought about it. It's just that I don't feel I need to reference it to explain my decision. This isn't intended as a discourtesy and is a reflection of the informal nature of our service.

Mrs F's legal cover isn't all encompassing. Like any policy there will always be terms, conditions and exclusions to be considered. And in the case of LEI, it's very common that there is a requirement that any underlying legal action has a reasonable prospect of succeeding. I think this is fair. Litigation can be expensive and a privately paying client wouldn't generally continue with legal action they were advised wouldn't achieve a positive outcome. So, I don't think an insurer should have to either.

Mrs F's policy says:

"At any time we may form the view that you do not have a more than 50% chance of winning the case and achieving a positive outcome. If so, we may decline support or any further support. Examples of positive outcomes are:

- a. Being able to recover the amount of money at stake..."*

Amtrust themselves aren't legal experts. So, I think it's fair that they rely on suitably qualified legal advice when making decisions about a claim. Unless that advice is so obviously wrong that a layperson could be expected to notice.

Mrs F has raised that J aren't experts in accountancy and thinks it's unfair that Amtrust have followed their advice in relation to the ability of the third party involved to pay any potential redress. I've considered this, but I think as legal professionals J would have an understanding of the chances of recovering a loss as it will form part of their consideration when providing advice in any legal case. So this doesn't change my mind as to whether or not it was reasonable for Amtrust to follow the advice from J.

The advice from J came from a suitably qualified person and I don't consider it to be obviously wrong. If Mrs F were to provide Amtrust with a conflicting legal opinion as to the prospects of continuing her case, I'd expect Amtrust to consider this. But as things stand, I think the decision they reached (when declining to agree to further funding based on the prospects of recovery) was both in line with the policy terms and fair.

Mrs F is concerned that she wasn't offered a choice of which solicitor to use and she thinks she should have been. The policy says:

"If you make a valid claim under this insurance, we will appoint our panel solicitors... to handle your case. You are not covered for any other legal representatives' fees unless court proceedings are issued or a conflict of interest arises..."

Mrs F's legal claim wasn't at the stage where proceedings were imminent and there is no evidence of a conflict of interest (something J would have been obliged to declare had there

been one). So I don't agree that Amtrust were unreasonable when not offering Mrs F a choice of solicitors.

Mrs F doesn't believe she should be responsible for the £700 cost of an expert report that she provided. This is the area where I don't agree with our Investigator's findings. As I've set out above the policy terms are clear that claims require reasonable prospects of success. But this doesn't mean that an insurer is entitled to decline every claim that requires expert evidence to support the merits of it unless this is funded by a policyholder.

Our longstanding approach has been that it's for a policyholder to show that they have a valid claim. Mrs F did that. She provided photographs and information about the defects of the work that she was complaining about. She also provided a report from the manufacturer of the materials used by the builder. This highlighted that there were issues with the application of the product. It also made suggestions for the remedial work required. As such, I'm satisfied that Mrs F evidenced she had a valid claim that Amtrust should respond to. I think this is supported by the fact that J initially reported that the claim had reasonable prospects of success (in January 2020).

If a further expert report was required to comment on the workmanship and quantum of the claim, then that is something I think it was for Amtrust to fund. I appreciate that prospects can change as a claim moves on. And had the expert report not supported Mrs F's claim and caused J to amend their position on prospects, that would be a different matter. But in the circumstances here, I think the further report ought to have been a part of the evidence gathering process that panel firms are instructed to prepare when a policyholder has demonstrated they have a valid claim. I don't think Mrs F should have been responsible for obtaining or paying for that report.

I appreciate that Amtrust are likely to seek to rely on the advice from J, specifically that without the further expert report, the claim didn't have the required prospects. I've considered this but I don't think that is a reasonable approach in the circumstances of this complaint. It would be possible to point at any further reasonable and necessary disbursement and say that without it, the prospects are negatively impacted. But Mrs F had evidenced she had a valid claim and prospects had initially been supportive. It seems it was the absence of the further report that impacted the prospects, rather than any new or conflicting evidence coming to light.

As such, I'm intending to direct Amtrust to reimburse Mrs F the cost of the report, along with 8% simple interest (yearly) from the date she paid the expert, until the date of settlement. I've also considered the overall service Mrs F received from Amtrust. They aren't responsible for the legal advice or service provided by J. And I think they generally appropriately responded to Mrs F's queries, referring matters to J as required. Excluding the issue of the expert report, Amtrust promptly authorised further funds for J to continue their work when it was appropriate to do so. It does seem that a great deal of Mrs F's dissatisfaction is with J. This includes their insistence on certain reports and quotes, advice as to who to use as an expert and their interpretation of the evidence provided. As above, this isn't something Amtrust are responsible for and Mrs F may be able to take her concerns about J to their regulator if she remains unhappy.

That being said, Amtrust accept that some documents weren't passed on as they should have been to J. This was in the earlier stages of Mrs F's claim and I'm satisfied it didn't impact on the ultimate outcome reached. But I agree that this fell below the standards Mrs F reasonably expected and would have caused some avoidable distress and inconvenience. Amtrust have already offered £250 compensation for the impact of this, and I think that is fair.

But I think failing to agree to fund and thereby requiring Mrs F to go and obtain a further expert report herself caused further distress and inconvenience. I intend to direct that Amtrust pays a further £250 compensation in that regard, bringing the total to £500.

Mrs F may feel that this still doesn't represent the impact events have had on her. But any legal claim (particularly one involving a home and which takes place during a pandemic) is always going to be a difficult and stressful time. It's clear Mrs F feels aggrieved by the actions of J and with her claim being declined.

But it wouldn't be fair for me to hold Amtrust responsible for all the distress and inconvenience she has experienced in the wider circumstances. Aside from the information sharing and the expert report, I don't think they provided poor service. They aren't responsible for the actions of the third party that caused this whole situation, nor for the actions of J. And in that context, I'm satisfied the £500 compensation I'm intending to award is fair for the impact of the avoidable distress and inconvenience that Amtrust are responsible for."

Both Amtrust and Mrs F responded with further comments that I'll address below.

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.

Amtrust don't believe they should meet the cost of the expert report. They have highlighted that for a claim to be valid, it must meet the policy terms, primarily in relation to having reasonable prospects of success. They also highlighted the difference between a non-court compliant report (like what Mrs F provided) and expert evidence in a format suitable for court.

I accept that the policy is clear that a claim must have reasonable prospects of success. But I don't agree that this means an insurer is entitled to decline every claim that requires expert evidence to support the merits or the quantum of the claim. The issue here is whether the information Mrs F had provided was sufficient to support her claim. I don't believe it is reasonable to require Mrs F to provide that information in a court compliant format. In my opinion the photographs and the report from the manufacturer highlighting issues with the application of their product was sufficient. So it is for Amtrust to fund and instruct suitable experts to assess the quantum of the claim. That is part of the evidence gathering process that panel firms are instructed to prepare when a policyholder has demonstrated they have a valid claim. It isn't something Mrs F should be responsible for obtaining or funding.

Amtrust have also argued that J had in effect changed their mind as to the prospects based on the absence of an expert report. I don't think this is a fair approach to take. As I pointed out in my provisional decision, it would be possible to point at any reasonable and necessary disbursement needed in the course of progressing a legal claim and say that without it, prospects are negatively impacted. So I don't believe Amtrust should be applying this approach.

Amtrust also suggested that the information from the manufacturer wasn't a report at all but a detail of the specification. The evidence Mrs F has shared (which I've no reason to doubt was passed on at the time of the claim) includes details of a site visit by the manufacturer. This includes their opinion on the application of their product and their suggestions for what needed to be done to put things right, so I don't agree this was solely a product specification.

I've considered the further policy terms Amtrust have highlighted. Such as the insurer only being responsible for costs they've authorised and the insured being responsible for providing (at their own expense) information required to decide if a claim may be accepted. Neither of these terms change my mind as to the outcome of this decision. Mrs F had, in my opinion, provided sufficient information for her claim to have been accepted.

In her response to my provisional decision, Mrs F expressed disappointment with the outcome. She also highlighted that J said at one point that their advice to a private client would be to raise court action and await the terms of defence entered. This was in an email from J to Amtrust dated 9 August 2021. I've considered this, but the same email also said *"This approach would not be without risk. In effect as soon as court action is raised there is potential exposure in respect of an adverse award of expenses in favour of the third party."* It appears that J were suggesting potential routes forward. But ultimately, I'm not persuaded that they'd changed their mind as to the prospects of recovery (based on the ability of the third party to pay any potential award). Indeed, the same email also comments on their conclusion that prospects of recovery were below 51%. And for further costs to be authorised it required that the claim met the requirements of the policy. In these circumstances, I don't think Amtrust declining to authorise further costs was unreasonable, particularly when doing so would have potentially opened them up to adverse costs (which J said could be in the region of £4,500 to £5,000).

Mrs F also expressed general dissatisfaction with the setup between her (as the insured), panel solicitors and Amtrust. Mrs F says she needed to go through Amtrust each time she needed to query something with M and that not having a choice of solicitor was unfair. She feels this unnecessarily adds to the time taken to deal with a claim. I can understand why Mrs F is frustrated and disappointed her claim didn't progress. But the arrangement between Amtrust and M (as a panel solicitor) is in line with industry practice for this type of insurance and isn't something I think is unfair. I'm also not persuaded that only allowing for a panel solicitor in the initial stages of a claim is unfair.

Overall, having considered everything both Mrs F and Amtrust have said in response to my provisional decision, I'm not persuaded to deviate from the outcome previously explained.

My final decision

For the reasons outlined above, my final decision is that I uphold this complaint in part.

Amtrust Europe Limited must:

- Pay Mrs F £500 compensation (if the £250 Amtrust originally offered has already been paid, this need not be paid again and only a further £250 is payable).
- Reimburse Mrs F with the £700 cost of the expert report. They should also add to the £700 8% simple interest (yearly) to be calculated between the date Mrs F paid the expert and the date Amtrust reimburses her.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs F to accept or reject my decision before 21 September 2022.

Richard Annandale
Ombudsman