

The complaint

F and F, a company, complain about Amtrust Europe Limited's handling of their legal expenses insurance claim.

All references to Amtrust in this decision include their claims handlers.

What happened

F and F occupied business premises under a sublease with A. A's landlord took back possession of its premises and in doing so F and F were denied access to the premises and couldn't take possession of their possessions or stock. As a result, they were prevented from operating any further.

A few days after this occurred, they got in touch with Amtrust for help with the issues they were facing; the policy offered a commercial legal helpline service they could speak to in respect of legal problems. Amtrust told F and F they were having trouble locating details of their policy. F and F obtained the details requested and provided this to Amtrust, but they still couldn't locate F and F's policy. As F and F was at risk of having their stock and possessions removed by A's landlord and couldn't obtain urgent legal assistance from Amtrust, they instructed Solicitors instead to help them.

F and F's Solicitors later corresponded with Amtrust with a view to obtaining funding for their costs incurred to date and going forward. Amtrust asked for further information from F and F's Solicitors. After considering that it said it wasn't prepared to cover their costs incurred to date as these were incurred without their consent and the policy wasn't in any event capable of responding to those costs because it didn't provide cover where litigation hadn't started—as was the case here. They did however offer to explore the possibility of funding F and F's costs in considering the outcome of a hearing between A and her landlord with a view to determining whether F and F might have a possible claim at that stage. Amtrust asked for F and F to confirm the level of costs that might be required for that process so that it may consider funding them. As yet, F and F haven't provided this information to Amtrust.

Our investigator considered F and F's complaint. He agreed that Amtrust were entitled to turn down F and F's Solicitor's costs because they weren't covered under the policy for the reasons Amtrust set out. But he also thought Amtrust did something wrong by failing to locate F and F's policy and provide them with legal advice from its legal advice line. He felt that its failure to do so led to some loss because F and F felt compelled to obtain legal advice from its own Solicitors in the absence of any help from the commercial legal helpline service. The investigator couldn't determine the value of F and F's loss, but he pointed out that it wouldn't have amounted to the cost of representation or corresponding with A's landlord. He initially said B should consider the loss and pay a proportion of F and F's Solicitor's costs, which would otherwise have been substituted by the commercial legal helpline service. Both parties objected to this approach. In response, the investigator accepted it would be difficult to unpick what work F and F's own Solicitor conducted as against what help the legal advice line would have provided. Instead, he substituted his earlier recommendation with a monetary payment of £250 from Amtrust to F and F to compensate them for its failure to identify their policy and provide help in the form of the

commercial legal helpline service.

Neither party agrees with the investigator's view, so the matter has been passed to me to determine.

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'm upholding this complaint for the same reasons as the investigator.

The starting point is the policy terms. They exclude:

"fees, costs and disbursements incurred prior to the written acceptance of a claim by the Insurer"

I appreciate F and F were trying to make a claim on their policy by contacting Amtrust from the outset of the problems they faced, but their Solicitor's costs incurred before Amtrust's written acceptance of the claim weren't covered until Amtrust provided their written acceptance of them. But even if I decided this was unfair because of the problems F and F faced in having their claim considered and accepted at an early stage, I would need to look at whether Amtrust would have covered their costs if things had gone as they should have. As the investigator pointed out, the policy only provides cover:

"... in the pursuit or defence of Civil Legal Proceedings between the Insured and his Landlord under the terms of a lease or tenancy agreement applying to the business premises of the Insured."

In this case F and F weren't involved in civil legal proceedings. Rather A was involved in proceedings with her landlord. So, F and F's claim wouldn't have been covered in any event. Because of this I can't say that Amtrust needs to do anything more in relation to F and F's Solicitor's costs or funding the claim. I'm pleased to see however that Amtrust are prepared to consider funding in relation to a potential claim by F and F once the outcome of a hearing between A and her landlord is known. It's reasonable for Amtrust to seek an estimate of costs in respect of F and F's Solicitor advising on this issue before it can agree to fund them. So, if F and F want Amtrust to consider this, they will need to provide them with the estimate requested.

I do however think Amtrust need to do something more in relation to their failure to recognise F and F's policy from the outset and provide them with the benefit of the commercial legal helpline service. F and F have said that if they'd been provided with this service, it's unlikely they would have needed to instruct Solicitors as they could've taken the advice that helpline would've given and corresponded with the parties in the dispute themselves. They refer to the absence of any advice being the reason they felt the need to instruct Solicitors particularly because they had been separated from their possessions and stock and had to cease trading. Because of this they say Amtrust should cover their Solicitor's costs that were incurred as a result. On the other hand, Amtrust says the helpline wouldn't have offered like for like assistance to that of F and F's Solicitor and that it's likely they would have signposted that advice be sought from a suitable expert to review the documents in the matter and help with that. Amtrust also says the helpline refers potential claims to the claims department and this wouldn't have been a claim that was covered by the policy in any event. So, F and F haven't lost out.

I've taken on board what both parties have said. I agree that F and F's first port of call would

not have been to instruct their own Solicitor if they'd received advice from the commercial legal helpline service. But I don't accept that the helpline would only have signposted the instruction of an expert and referred the claim to Amtrust to consider under the terms of the policy. Like the investigator, I think that a service purporting to be a commercial legal helpline that was limited to only doing those two things wouldn't be a legal helpline service at all. Given the nature of legal helpline services, I think it would've been likely that F and F would've been given some immediate advice about what they could do about their possessions and stock. It's also possible some suggestions would have been made about what F and F could write to the other parties in the dispute before signposting them to a Solicitor for specific help with the matter. This doesn't mean that F and F wouldn't have eventually instructed their own Solicitors. And it might be that they would've wanted some certainty about what to do about their position that was more than the legal helpline service could provide. What is certain however, is that it's difficult to say would've happened at this stage, other than to say that F and F were denied the opportunity of that advice when they sought and needed it.

I don't think the correct remedy is for Amtrust to pay F and F's Solicitor's fees to put things right. Their instruction would naturally go significantly beyond the service F and F could've expected from the commercial legal helpline service. I've set out what I think is a fair award of compensation in the circumstances which broadly takes account of a couple of hours' worth of costs that F and F might have incurred had they taken some comparable advice from a Solicitor likely to be charging similar rates to those working for comparable insurers on similar legal expenses insurance policies.

Putting things right

Amtrust Europe Limited should pay F and F £250 to compensate them for their failure to provide them with the services of the commercial legal helpline from the outset of their legal problem.

My final decision

I uphold F and F's complaint against Amtrust Europe Limited and direct them to put things right in the way that I've directed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask F and F to accept or reject my decision before 23 February 2023.

Lale Hussein-Venn
Ombudsman