

The complaint

Mr and Mrs Y have complained about the settlement Amtrust Europe Limited has offered for a claim they made under their Furniture Protection Plan extended warranty.

What happened

Amtrust accepted a claim for damage to an item of Mr and Mrs Y's furniture. Amtrust decided the furniture couldn't be repaired, so it offered to settle the claim by re-selection which would allow Mr and Mrs Y to select a new item from the original retailer up to the value of their original item. The value they offered for re-selection was the original purchase price of the damaged item plus 50% toward the cost of replacing their undamaged matching items. Or it said it would pay cash up to the estimated cost to Amtrust of repairing or replacing the damaged item.

Mr and Mrs Y chose the re-selection option and found a suitable replacement item they wanted from the original retailer, which was discounted. But Amtrust said the conditions of re-selection stated any re-selection item could not be on a reduced offer. Mr and Mrs Y felt this was unfair as their original furniture had been purchased on a reduced offer too.

One of our investigators considered Mr and Mrs Y's complaint. He initially felt it should be upheld. He explained that the re-selection discount conditions weren't explained in the terms and conditions of the policy and that Mr and Mrs Y's furniture was initially purchased on a reduced offer. So, he said Amtrust should allow them to select the replacement they wanted, or that it should pay a cash settlement equal to the value of the re-selection offer.

Amtrust didn't accept our investigator's opinion. It said it couldn't increase the cash settlement offer as the amount offered was in line with the policy terms and conditions. Amtrust said it doesn't allow re-selections on reduced items as discounts aren't available to all customers. So, to be fair to all its customers it insists that re-selections must be on fully priced items.

Our investigator reconsidered his findings in light of Amtrust's response and changed his opinion. He explained that Mr and Mrs Y's policy covered them for the original purchase price, and that Amtrust's offer delivered that. He also said Amtrust's reason for restricting re-selections to fully priced items was reasonable.

Mr and Mrs Y didn't accept our investigator's revised opinion. So as no agreement had been reached, the complaint was passed to me to decide.

I was minded to reach a different outcome to our investigator's revised opinion. So, I issued a provisional decision, to give both parties an opportunity to comment on my provisional findings, before I reached my final decision.

In my provisional decision I said:

“What I’ve provisionally 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 agree with our investigator’s first opinion for the following reasons:

- *Mr and Mrs Y’s policy document explains the limits to their cover:*

“The most the Insurer will pay under this Furniture Protection Plan is limited to the original purchase price of your product up to a maximum of £15,000 (including VAT). If any item of furniture is replaced following a successful claim no further cover will be available under this Plan for that replacement item.”

- *The policy document also sets out how Amtrust will settle claims in the event an item is deemed unrepairable:*

“If a repair cannot be achieved, we may choose to replace the damaged part. In the event of this not being possible, (redacted) may at its sole discretion provide a replacement product(s). Alternatively, (redacted) may at its sole discretion settle the claim by a cash payment instead of a repair or replacement. Any cash settlement will be limited to the equivalent cost of repair or replacement by (redacted).”

- *Mr and Mrs Y’s original furniture was purchased at a discount. And nothing in the policy terms and conditions mentions that replacements (re-selections) will be restricted to non-discounted items. I also haven’t seen any evidence to suggest that this restriction was highlighted to Mr and Mrs Y prior to purchasing the policy. It only appears to have been mentioned after their claim had been accepted. So, I don’t think it’s fair for Amtrust to apply this restriction when Mr and Mrs Y wouldn’t have been aware of it when they decided to purchase the policy.*
- *I also don’t accept Amtrust’s logic that by allowing Mr and Mrs Y to re-select a discounted item means it would be treating other customers unfairly. As I see it, Amtrust is simply offering a settlement equal to the original value of the furniture, as it’s required to and as it would do with any other policyholder. By offering such a settlement to any two policyholders in the same position, it would have treated both equally and fairly. If one of those policyholders then manages to negotiate a discount with the retailer, I think that’s between them and the retailer and doesn’t amount to Amtrust treating either unfairly.*
- *Ultimately, Amtrust is the insurer and as such has the power to set the terms of cover. So, if it wanted to restrict replacement items to non-discounted products, it ought to have written this restriction into the terms and conditions of the policy.*

- *So, as the settlement restriction isn't in the terms, and as I don't accept that it's an essential restriction to ensure Amtrust treats all customers fairly, I think Amtrust should allow Mr and Mrs Y to use their re-selection offer on a discounted item, provided said item meets the remaining requirements of the policy terms. Alternatively, Amtrust should pay a cash settlement equal to the full value of the re-selection offer it's made to Mr and Mrs Y."*

I set out that I was intending to uphold Mr and Mrs Y's complaint and to direct Amtrust to either allow Mr and Mrs Y to use their re-selection offer on a discounted item or to pay a cash settlement equal to the full value of the re-selection offer.

I said I'd wait two weeks to allow the parties to make further representations before I reached a final decision. However, both sides responded promptly to confirm that they accepted my provisional findings and/or had nothing further to add before I reached my decision. So, as I've had responses from both parties, I'm moving forward with this, my final decision.

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.

In the absence of any additional evidence or arguments in response to my provisional decision, I've reached the same conclusions I reached in my provisional decision – for the same reasons.

My final decision

For the reasons above, and in my provisional decision, I uphold Mr and Mrs Y's complaint. Amtrust Europe Limited must either:

- Allow Mr and Mrs Y to use their re-selection offer on a discounted item.

Or

- Pay a cash settlement equal to the full value of the re-selection offer.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs Y to accept or reject my decision before 2 November 2022.

Adam Golding
Ombudsman