

The complaint

Mr S and Miss C complain that Amtrust Europe Limited has unfairly declined a claim under their legal expenses insurance policy.

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

What happened

Mr S and Miss C made a claim on their policy to pursue legal action against their new homes building warranty for poor construction of their home.

Amtrust declined the claim due to a policy exclusion which says there is no cover for claims made against the insurer. It said as it is also the insurer of the building warranty, the legal expenses policy isn't going to pay the costs of taking legal action against itself.

Mr S and Miss C raised a complaint. They said it was an unreasonable technicality to decline the claim, as they weren't aware of who the insurers for both policies were given that they're marketed under different brand names. And they didn't choose the building warranty, this was provided by the builder.

As Amtrust maintained its position, Mr S and Miss C brought their complaint to our service. And our Investigator upheld it. She didn't think the policy exclusion had been applied fairly in the circumstances of the case.

Mr S and Miss S accepted this outcome, but Amtrust didn't. So the complaint 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.

The policy exclusion Amtrust relies on, as set out in the terms and conditions of the legal expenses section, says:

"There is no cover for...claims made by or against Your insurance advisor, the Insurer, the Advisor or Us."

The policy defines "Insurer" as Amtrust Europe Limited.

This isn't an unusual policy exclusion, as insurers are understandably unwilling to fund the costs of taking legal action against themselves. But I've thought about whether it's been applied fairly in the circumstances of this claim, and I don't think it has. I'll explain why.

As I've said, it's reasonable for Amtrust to specifically exclude claims against itself under its policy. But it doesn't exclude claims against all insurers. So arguably, a claim against

another insurer would be covered under this policy subject to it meeting the remaining policy terms and conditions.

In this case however, it just happens that the insurer of the other policy is also Amtrust. And whilst that would be a claim against itself, it's a claim against itself in another capacity – the insurer of the building warranty, not the insurer of the legal expenses policy. I'm persuaded by Mr S and Miss C's argument that this is a technicality which has been applied unfairly.

I'm also persuaded by their comments that this situation was outside of their control. They didn't choose the building warranty; the builders did. And the legal expenses insurance is an add on to a home insurance policy underwritten by another insurer. So I don't think it's fair to penalise Mr S and Miss C for Amtrust holding a percentage of the insurance market.

In summary, I'm not satisfied that Amtrust's rejection of the claim based on this policy exclusion is fair and reasonable in the circumstances. So it should reconsider the claim in line with the remaining policy terms and conditions.

My final decision

For the reasons I've explained, I uphold this complaint and direct Amtrust Europe Limited to reconsider this claim under the remaining policy terms and conditions.

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

Sheryl Sibley
Ombudsman