

The complaint

Ms D is unhappy with what Amtrust Europe Limited did after she made a claim on her landlord legal expenses and rent guarantee policy.

What happened

In August 2021 Ms D got in touch with Amtrust (all references to Amtrust include its claims handlers). She wanted assistance in bringing an eviction claim against a tenant for breach of his tenancy agreement. She said he'd damaged her property and was preventing repairs being carried out. After obtaining further information from Ms D, Amtrust referred the matter to panel solicitors.

There was discussion between the solicitors and Ms D over what evidence was required to support her claim including whether tenant was in rent arrears, what the damage to the property was and details of how his deposit had been registered. Ms D had difficulties in responding to some of the emails because of health problems but confirmed towards the end of December that she did want to pursue the eviction.

Amtrust said prior to possession being obtained cover was only provided where a tenant had failed to perform their obligations under the tenancy agreement. As it now appeared the rent at the property was up to date there was no breach of the agreement. So Ms D would need to issue a Section 21 notice (which didn't require a breach of the agreement). If the tenant didn't then vacate the property, the policy could potentially assist. Amtrust offered assistance from panel solicitors in checking the validity of the notice.

Having sought advice from them Ms D issued a notice at the start of January which expired in early March. However, when she contacted the solicitors at the start of March they said there was an error with the notice which they'd missed. But they noted the tenant had agreed to vacate the property at the end of March. They offered to draft the necessary paperwork in relation to this and to issue a revised Section 21 notice.

Ms D said she'd lost confidence in the panel firm and asked Amtrust to find her an alternative. Amtrust said that there was no cover under the policy for the issuing of the notice. So Ms D would need to reissue it herself. It would then find another solicitor to confirm its validity.

But her policy was due to expire in April. And, as the insured event would be the tenant not vacating on expiry of the revised notice, Ms D would need to renew her policy if she wanted cover for that. I understand Ms D in fact took out cover elsewhere and her tenant left the property at the expiry of his tenancy agreement on 16 April 2022.

Our investigator didn't think it was reasonable to expect Ms D to have continued with the existing panel firm and said Amtrust should arrange for a different firm to assist her. She also said it should reimburse any legal expenses she'd incurred in line with the terms of her policy.

Amtrust didn't agree. It thought that the offer the panel firm had made to put right its error was reasonable and if Ms D had accepted it was likely possession of the property could

have been achieved earlier.

Ms D said the loss she'd incurred was having to take out another legal expenses policy in order to obtain further advice. And her tenant had caused more damage during the additional time he was in the property which would have been prevented but for the errors she believed Amtrust had made.

I issued a provisional decision on the complaint last month. In summary I said:

I appreciate this has been an extremely distressing and stressful situation for Ms D. From the correspondence I've seen it's clear she had some difficult health and personal issues to deal with while the problems with her tenant were ongoing. I was very sorry to learn of these and I know this will have been a particularly challenging time for her.

However, it does seem to me a number of her complaint issues relate to the actions of the panel solicitors. I don't think it's in dispute those solicitors did make some mistakes; they've acknowledged missing the error in the Section 21 notice Ms D drafted. But the question I need to consider is whether her insurer - Amtrust - did anything wrong in dealing with the claim she made to it.

Amtrust isn't responsible for the actions of the panel solicitors and those actions aren't something I can consider. If Ms D wants to pursue her concerns about what the panel firm did she can make a complaint to that firm and possibly to the Legal Ombudsman if she's unhappy with its response.

Ms D's contact with Amtrust in March 2022

I've considered first whether Amtrust should have done more to assist Ms D when she got in touch with it in March 2022 (after the error with the Section 21 notice) had been identified. I can understand why Ms D had lost confidence in the panel firm. But I don't think Amtrust needed to appoint an alternative firm.

There wasn't cover under the policy for the claim Ms D was pursuing at that point so there would have been nothing to appoint an alternative firm to do. I appreciate Amtrust had previously asked the panel solicitors to check the validity of the Section 21 notice but that isn't something which is covered by her policy. I think it was reasonable of Amtrust to nevertheless offer an alternative firm to check the validity of any further notice Ms D issued.

Amtrust also said in order for cover to be provided for any claim Ms D subsequently wanted to make following expiry of that notice she'd need to renew her policy. Her policy defines an insured event as "the incident or the start of a transaction or series of incidents which may lead to a claim or claims being made under the terms of this Insurance".

So if the insured event in this case was the tenant's non-compliance with the Section 21 notice Ms D would need to have cover in place at the point that happened. I appreciate Ms D says she wouldn't have needed to renew if the panel solicitors had spotted the error in the notice but that's something she'd need to raise as part of a complaint against that firm; it isn't something Amtrust is responsible for.

Ms D's initial claim

Turning to what happened earlier in the claim I can see there was some initial discussion between Amtrust and Ms D about the information that was required to support this. I don't think it was unreasonable of Amtrust to request those details from her. And it's a condition of her policy that any claim has prospects of success. In relation to that it says:

there must be more than a 50% chance of winning the case and achieving a positive outcome... the assessment of Your claim and the prospects of its success will be carried out by an independent Adviser. If the Adviser determines that there is not more than a 50% chance of success then We may decline or discontinue support for Your case."

So I think it was right Amtrust referred the matter to panel solicitors for them to consider. I recognise Ms D is unhappy with the contact she then had with the panel firm but that isn't something I can consider.

However, I do have concerns about the basis on which Amtrust asked the panel firm to consider the claim. I can see the correspondence it sent it at the time focussed on issuing notices in relation to a claim for rent arrears. But the information Ms D sent didn't reference that issue; her concerns were around other breaches of the tenancy agreement (for example damage caused to the property and the tenant not allowing access in order for these to be rectified). It appears the panel solicitors didn't advise on these issues because Amtrust didn't instruct them to do so.

And Amtrust subsequently told Ms D that only a claim for rent arrears would be covered under the policy. But I don't think that's right. Her policy covers adviser costs to pursue:

a) Legal Action against a Tenant or Guarantor to recover possession of the Insured Property where the Tenant fails to perform his obligations set out in the Tenancy Agreement relating to the rightful occupation of the Insured Property

It doesn't limit the cover to a breach relating to rent arrears. However, a claim for possession relating to a tenant breaking a non-rental obligation of their tenancy would require a judge to decide whether it was reasonable to grant possession. So I think Amtrust should have asked the panel solicitors to consider whether a claim on that basis would have had prospects of success.

As that hasn't been done it's not clear whether that would have been the case or not. But even if it was Ms D's key concern here is the length of time her tenant remained in the property (and the additional damage she believes he caused during that period). So I've thought about whether, if this aspect of her claim had been properly considered by Amtrust, the tenant would have left significantly sooner than he actually did.

I can see after Ms D made her claim to Amtrust she had some health and personal problems that impacted her ability to pursue it. Ms D wasn't able to respond to all of the emails from the panel solicitors and told them in October she didn't have capacity to deal with the eviction. She asked for the matter to be put on hold until January (and contacted the solicitors again towards the end of December).

Given that, even if Amtrust had agreed to fund a possession notice in relation to the broader tenancy issues, it's unlikely that would have been issued until early January. And looking at the timeframes for that process (including how long it would take for a court hearing to be arranged) I think a possession order (if granted) is likely to have expired at roughly the same time Ms D's tenant actually left her property.

As a result I don't think any additional damage caused to her property by the tenant has come about because of the failing by Amtrust I've identified. And it doesn't appear Ms D did incur any legal costs in evicting her tenant because he left at the end of his tenancy. I appreciate Ms D took out legal expenses cover with a different provider to obtain general legal advice on her position. But I don't think that represents a loss to her. If she wanted to have ongoing cover for the risks covered by a legal expenses policy she would always need to have done that either with Amtrust or another insurer.

However, I do think Ms D has been caused some distress and inconvenience by what Amtrust got wrong. She made numerous references to the damage issue in her correspondence with Amtrust. So there has been a lost opportunity to consider all aspects of the claim she made. If Amtrust had provided clear instructions to the panel solicitors at the outset and subsequently provided correct advice to Ms D about what her policy covered she'd have been clear about what the position was on this issue. And I've already identified this was in itself a particularly difficult time for her. Taking all of that into account I think Amtrust should pay Ms D £200 to recognise the impact of what it got wrong on her.

Responses to my provisional decision

Ms D didn't respond to my provisional decision. Amtrust did respond. It said the information sent to the panel solicitors included the claim form which referenced access problems and damage. As a result they would have been aware of this and it was discussed in correspondence between them and Ms D.

So Amtrust thought the panel firm had considered these aspects of the claim as they related to potential legal action to gain vacant possession; their assessment wasn't limited to the rent arrears issue. It thought the claim had been handled in accordance with the policy terms and conditions.

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 appreciate the information Amtrust sent to the panel firm did include the claim form and there was discussion between that firm and Ms D where it sought further information about the issues highlighted in it. But the covering letter Amtrust sent with its instructions only referenced the issues of the rent arrears and requested action in relation to that.

When Ms D then discussed matters over email with the panel firm in December 2021 it told her it had been instructed to send correspondence in relation to the rental breach. And it would need Amtrust to confirm whether there was cover for the other issues Ms D wanted to pursue. So I don't think Amtrust are right to say these issues were assessed by the panel firm.

Ms D then contacted Amtrust to find out if she was covered for these issues and it told her that as her tenant was no longer in rent arrears they "*were not failing the obligations of their tenancy agreement*". But as I explained in my provisional decision the policy doesn't limit cover for possession to a breach relating to rent arrears and Ms D was clearly alleging there were other breaches of the agreement. So I continue to feel Amtrust should have instructed the panel solicitors to consider whether a possession claim relating to those other breaches would have had reasonable prospects of success.

For the reasons I've already explained I don't think any additional damage caused to Ms D's property by the tenant would have been prevented even if Amtrust had done that. But I do think Ms D has been caused some distress and inconvenience by what Amtrust got wrong and that £200 is the right amount to recognise that.

My final decision

I've decided to uphold this complaint. Amtrust Europe Limited will need to put things right by paying Ms D £200.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms D to accept or reject my decision before 8 February 2023.

James Park
Ombudsman