

The complaint

Mr L has complained about Amtrust Europe Limited's decision to turn down his claim under his Hire and Repair Costs (HRC) insurance policy.

What happened

Mr L was involved in an accident and called his motor insurer to make a claim under his policy for the damage to his car. They referred him to an accident management company, who I'll refer to as A, who asked Mr L about the accident and offered to arrange a hire car for him, as his car wasn't drivable.

Mr L had a hire car while his was in for repair and it was intended that the hire charges would be recovered from the other driver or their insurance company on the basis Mr L wasn't at fault. At the same time A also provided him with a HRC policy with Amtrust to cover the hire car charges if they couldn't be recovered from the other driver or their insurance company.

A was unable to recover the hire car charges of £4,385.54 and so Mr L claimed on his HRC policy with Amtrust through A. Amtrust turned down Mr L's claim on the basis he misled them about the circumstances of the accident.

Mr L complained to A, but they said Amtrust wouldn't alter their position. So Mr L asked us to consider his complaint.

One of our investigators did this. She said Amtrust was wrong to turn down Mr L's claim and that they should consider it.

Amtrust wouldn't agree to do this. They maintained Mr L misled A when he spoke to them about the accident and that this means they were entitled to turn down his claim. So the complaint came to me for a decision.

I issued a provisional decision on 11 January 2023 in which I set out what I'd provisionally decided as follows:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

The relevant rules say that insurers must handle claims fairly and shouldn't unreasonably reject a claim. I've taken these rules into account when deciding what I think is fair and reasonable in the circumstances of Mrs S's complaint.

Unfortunately, Amtrust have not provided us with a copy of Mr L's policy document. They have provided a document entitled Group Policy Summary Document – Hire and Repair Costs. But this policy is in the name of A and does not appear to be a summary of the HRC policy taken out in Mr L's name. This document refers to a Customer Agreement, but Amtrust haven't provided a copy of this either. They have provided a copy of a Vehicle Hire Agreement in Mr L's name, but this doesn't seem to be the Customer Agreement referred to.

Amtrust issued a final response letter to Mr L. In this they quoted some policy conditions, but none of these appear in the summary document I've referred to and it looks like there is a word missing in one of the conditions they've quoted.

The fact Amtrust haven't provided the right documents and seem to have misquoted the terms and conditions of the policy is extremely unhelpful and makes it much more difficult for me to determine what has happened. So, I invite them to provide all the correct documents as evidence in response to this provisional decision. However, I've decided to issue a provisional decision without these documents, as I still think I can determine the fair and reasonable outcome to this complaint based on the evidence I do have.

As I understand it, Mr L's HRC policy provides cover for any amount he becomes liable to pay if A can't recover the hire charges from the other driver's insurance company. Mr L has told us he is being chased for over £4,000 and the final response letter provided by Amtrust on Mr L's complaint says he owes £4,385.54. As I've already mentioned, this letter also refers to what I assume are the terms and conditions of Mr L's HRC policy, although I cannot be sure of this because of Amtrust's failure to send us a copy of these. And the letter suggests they think Mr L breached the following condition:

"You must at all times...(ii) Ensure that neither you nor the driver of your vehicle misled us about how the accident in any important way" (sic). There is clearly a word missing which I have assumed is 'happened' and I have also assumed the accident this refers to is the one that led to the damage to Mr L's vehicle. The reference to 'us' must mean Amtrust, but as Mr L didn't actually speak to them before taking out the policy, I assume by 'us' Amtrust also mean their agent, which in Mr L's case is A.

I think that in order for Amtrust to rely on a breach of this condition they would need to show Mr L deliberately misled A when he spoke to them about the accident. This is because a breach of this condition has very serious consequences for Mr L and leaves him liable for a great deal of money. And he could only be expected to provide information about the accident based on what he could recall of it from his point of view. And the fact he was doing so in the aftermath of an accident also needs to be taken into account.

Amtrust have provided dashcam footage obtained from the other driver of the accident Mr L was involved in. And it can be seen from this that the other driver proceeded through a green light and then Mr L came across in front of him and he hit Mr L. I've spoken to Mr L and he has told me that he was entering a roundabout and as he approached the entry to it the traffic light in front of him was green. He explained how as he went through the light it changed to Amber and that he was going quite slowly. He's described how there was a fairly long distance between where he entered the roundabout and the road through the roundabout the other driver emerged from. And he thinks this meant he was able to drive through an amber light and still be in the path of the other driver when he went through the green light. He's described how the other driver's car hit the driver's side of his vehicle near the back of it, which he thinks shows he was nearly past the junction when the other driver hit him. He's also explained to me that he told A this is what happened when he spoke to them, including about the traffic lights.

Amtrust has said they can't provide a recording of the telephone conversation Mr L had with A. And they've not provided a contemporaneous note of it. A's notes do refer to the fact someone listened to this call and that Mr L didn't mention the traffic lights in it, which is contrary to what Mr L said to me. And, even if Mr L didn't mention the traffic lights, it doesn't mean he intentionally misled A.

Without contemporaneous evidence from Amtrust to show Mr L deliberately misled A, I don't think Amtrust have provided sufficient evidence to show they were entitled to rely on a

breach of the abovementioned condition to reject Mr L's claim.

In view of what I have said, I think as part of the fair and reasonable outcome to Mr L's complaint I should require Amtrust to settle his claim under his HRC policy in full. I also think Amtrust should cover any late payment fees or interest incurred by Mr L as result of him not paying the amount he owes for the hire charges sooner. This is because Mr L wouldn't have incurred these costs if Amtrust had settled his claim when they should have done.

In addition to this, I think Amtrust should pay Mr L £250 in compensation for the distress and inconvenience he has experienced as a result of what I consider to be Amtrust's unfair decision to turn down his claim. This is because – as a result of it – he has had the worry of a large debt hanging over him and the concern of being pursued by a debt collector for it.

I gave both parties until 25 January 2023 to provide further comments and evidence. And neither party has provided further comments or evidence.

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.

As neither party has provided comments or evidence in response to my provisional decision, I see no reason to depart from what I provisionally decided. And – in view of Amtrust's failure to provide the full policy terms, which means I can't check what is actually due to be paid in settlement of Mr L's claim, I think it is fair and reasonable to make Amtrust settle it by paying any hire charges Mr L is liable for in full.

Putting things right

It therefore follows that for the reasons set out in my provisional decision dated 11 January 2023 and above, I consider it is fair and reasonable to uphold Mr L's complaint and make Amtrust do the following:

- Pay any hire charges Mr L is liable for in full.
- Cover any late payment fees or interest incurred by Mr L as a result of him not paying the amount he owes for the hire charges sooner.
- Pay Mr L £250 in compensation for distress and inconvenience.

My final decision

For the reasons set out above and in my provisional decision I uphold Mr L's complaint and order Amtrust Europe Limited to do what I've set out above in the 'Putting things right' section.

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

Robert Short
Ombudsman