

The complaint

Mrs R complains that Amtrust Europe Limited unfairly refused to indemnify her on a group protection policy.

Reference to Amtrust includes its agents.

What happened

Mrs R was involved in an accident with another vehicle. She had comprehensive motor insurance with another underwriter (U). She reported the claim to U, but because the circumstances of the accident looked like Mrs R wasn't at fault, she was referred to an accident management company (A) to deal with the claim.

A arranged for Mrs R's car to be repaired and provided a replacement vehicle for the duration. The replacement car was provided on a credit hire basis, with the intention of claiming the cost from the other driver's insurer (the TPI). But the agreement said if A couldn't recover the costs from the TPI, then Mrs R would be liable for them.

To protect against these potential costs A took out a group protection policy with Amtrust which Mrs R benefitted from. The policy provided cover for the credit hire and repair costs in the event they were unable to be recovered from the TPI. But, like all insurance policies, not everything was covered and conditions and exclusions applied to the policy.

In this case, A stopped pursuing the TPI for the costs. This was done because the TPI said Mrs R's car didn't have a valid MOT at the time of the incident. The TPI said it therefore shouldn't have been on the road, so doesn't think it needs to pay the hire costs Mrs R incurred while it was being repaired.

A went on to say that because Mrs R's car didn't have a valid MOT, she'd breached the terms of the hire agreement. And Amtrust, for the same reason said it was refusing to indemnify her – meaning she wasn't able to make a claim from it. All this meant that A then took the decision to pursue the hire costs - £4,130.22 – from Mrs R directly.

Mrs R doesn't think that's fair, so she brought her complaint to us.

One of our investigators recommended it be upheld. She thought it was a clear condition of the group protection policy that Mrs R's car had a valid MOT. But she didn't think Amtrust had done enough to show it was prejudiced by it not having one.

Amtrust didn't agree and asked for an ombudsman's 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.

Having done so, I'm upholding this complaint. I'll explain why.

We've not been provided with the full policy terms in this case. Amtrust has said this is because it's a group policy. But from what we have been provided, it's clear that the policy says it won't provide cover where Mrs R's car "...*was being operated without a MOT*...". So, I'm satisfied that's a term in the policy. But I also need to be satisfied it's fair that Amtrust rely on it to refuse to indemnify Mrs R for the costs she's being perused for.

Mrs R's car was being operated without an MOT. This point isn't disputed. Her car didn't have an MOT at the time of the incident. So, on the face of it, it would seem reasonable to rely on the term. Amtrust don't provide cover where there's no MOT in place, and there was no MOT in place.

But importantly, I need to consider prejudice and whether Amtrust is applying the term in a fair and reasonable way. It's only fair for Amtrust, or any insurer, to rely on a term to decline a claim or refuse indemnity if that term is material to the loss. And because it's Amtrust relying on the term, it is for Amtrust to evidence it's been prejudiced.

At first glance, this would seem a simple task. Amtrust are only involved because A say they can't get the costs back from the TPI. And A say they can't get the costs back because Mrs R's car didn't have a valid MOT. That, on the surface looks like clear prejudice.

But, while this decision concerns Amtrust's actions, not A's, I need to also consider deeper why A stopped pursuing the hire costs from the TPI. A is entitled to make a commercial decision not to take the matter to court, but that decision has considerable impact on Mrs R.

In essence, I need to be satisfied that on balance, A wouldn't have been unable to recover its costs from the TPI. In other words, Amtrust needs to show on balance that if this case were taken to court, that A would lose. And that it would lose on the basis that Mrs R's car had no valid MOT.

If Amtrust were able to show that if A decided to carry on pursuing the TPI for costs it would likely lose, then I think Amtrust would have reasonably shown it was prejudiced. But if it can't do this, then I'm not persuaded it would be the lack of MOT, as opposed to A's decision not to pursue the TPI that prejudiced Amtrust's position.

Amtrust has provided a number of court cases as evidence that A would be unlikely to be successful in pursuing the TPI for the hire costs. Some of these cases suggest just that, that A would be unsuccessful. But others don't. Some suggest that the lack of MOT alone wouldn't necessarily mean A would be unsuccessful were the case to go to court. From looking at various cases, key factor seems to be whether the party driving without an MOT knew they were doing so, and whether the vehicle would have passed an MOT.

In this case, Mrs R wasn't aware she didn't have an MOT on her car. And I think given the circumstances, that's feasible. There was a misunderstanding when she purchased the car and as soon as she became aware, she took the car to be tested. It passed.

Therefore, I'm not persuaded that Amtrust has shown that it was the lack of MOT that prejudiced its position here. Yes, it only became involved because A stopped pursuing the TPI, and A did this because the TPI objected to paying the hire costs because of the MOT. But the TPI is within its rights to object. And while A decided not to pursue the TPI, I've not been persuaded that it would have been unsuccessful if it continued that pursuit. Indeed, from the cases I've seen it seems entirely plausible it may have been successful.

So, I'm more minded to say that it was A's decision not to pursue the TPI which led to Amtrust becoming involved. I'm not here to say whether that decision was one that A should have made or not, but I don't think it's then fair or reasonable to say that it was the lack of

MOT that prejudiced Amtrust's position. Because had A continued to pursue the TPI, it may have been successful in recovering the hire costs.

Putting things right

Amtrust should therefore provide indemnity to Mrs R. And if A continues with its decision that it doesn't want to pursue the TPI for the hire costs, then Amtrust should step in and offer cover in line with the remaining terms of the policy – without relying on the exclusion surrounding the MOT.

Mrs R should assist both A and Amtrust in any action to try and recover the costs from the TPI, and should a claim need to be made on the policy with Amtrust, she should cooperate with Amtrust to help it assess it quickly and promptly.

Being asked to pay over £4,000 in costs and being worried where you'll find that money from, is, I imagine, distressing. So Amtrust should pay Mrs R £150 for the distress caused by refusing to indemnify her for those costs.

My final decision

For the reasons set out above I uphold this complaint and require Amtrust Europe Limited to:

- If A is unable to recover the hire car charges from the third party, Amtrust should reinstate indemnity for Mrs R under the group protection policy and settle the hire car costs directly with A.
- Pay Mrs R £150 compensation for the distress of having indemnity removed and being faced with a large bill.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs R to accept or reject my decision before 7 April 2023.

Joe Thornley
Ombudsman