

The complaint

Mr and Mrs P have complained about the settlement and service provided by Amtrust Europe Limited ('Amtrust') under their furniture protection policy. For the avoidance of doubt, the term 'Amtrust' includes its agents, contractors, and representatives in this decision letter.

What happened

Mr and Mrs P bought a sofa and swivel chair in August 2019 and took out the relevant policy with Amtrust at the time, which covered accidental damage and staining. The sofa was damaged in 2020 and repaired by Amtrust. Mr and Mrs P then reported further damage to the sofa when their son and his friends had a party in July 2022. They thought that clothes had scratched the corner sofa. Amtrust accepted the claim. It offered replacement covers which weren't a successful match, and also offered further repairs. Mr and Mrs P were unhappy with this and Amtrust offered Mr and Mrs P the opportunity to select a new sofa from the retailer up to the value of nearly £2,700 or a cash settlement of just over £1,300.

Amtrust upheld Mr and Mrs P's complaint regarding certain service and communication failures and offered compensation of £100 in this respect. Mr and Mrs P were unhappy with the outcome of their complaint and referred the matter to this service.

The relevant investigator upheld Mr and Mrs P's complaint. She said that it was standard practice for insurers to pay the equivalent of what they would pay for a repair or replacement. However, as to the reselection option, she noted that Amtrust had said that it had included a 50% matching set discount for the swivel chair, however she couldn't see that this had been added to the settlement figure. She considered that this should be added so that the settlement was in line with the offer made in Amtrust's letter of May 2023.

As to the cash settlement option and Amtrust's position that it should be 50% of the reselection figure, as this is the discount it would receive from the retailer, the investigator said it hadn't provided evidence to support this. She didn't think it was fair to deduct any reselection discount. She therefore recommended that Amtrust offer Mr and Mrs P the choice between reselection or a cash settlement, both to the value of just over £3,000. Finally, with regard to service issues, the investigator concluded that the compensation offer of £100 for the delays was fair and reasonable.

Mr and Mrs P wished to correct inaccuracies in the view but were willing to accept a cash settlement for just over £3,000. However, Amtrust disagreed with the investigator's view and stated that whilst it didn't have evidence of the retailer's agreement as to the discount it would receive, it said this had never been a problem previously. The matter has therefore been referred to me to make a final decision in my role as Ombudsman.

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 central issues for me to determine relate to the amount and manner of settlement of Mr and Mrs P's claim as well as certain service failures. I uphold the complaint for the reasons which follow.

I turn firstly to Mr and Mrs P's submissions. They said that the first repair was carried out in 2020 and the poor quality of repair is the reason *'the claim made in 2022 is now irreparable.'* Whilst the repair initially appeared to be successful in 2020, they said that the scratches opened back up and pink staining came through. Mr and Mrs P said Amtrust's technician said the sofa was unrepairable as the previous repair had been *'bodged'*. They said the scratches *'hadn't been filled and sealed correctly which is why it had split open again,'* and the wrong colour mix had been used. Mr and Mrs P said new covers were ordered but didn't match the original. Amtrust was unable to repair the sofa to a satisfactory level and could guarantee the repair for only six months, due to the previous poor repair.

Mr and Mrs P also said they'd had to chase Amtrust for many months. After many phone calls to Amtrust, it eventually offered a voucher to the value of the sofa or half this as a cash payment. Mr and Mrs P said the current cost of a similar sofa to their own was now much higher. They therefore asked Amtrust to replace the sofa on a like for like basis or to refund the full value in cash. When they complained in July 2023, Mr and Mrs P said that the issue had eaten into almost a year of their warranty. They felt that the terms and conditions of the policy mentioned by Amtrust weren't applicable, due to the first technician's *'bodged'* job and so it was Amtrust that damaged the sofa. Finally, Mr and Mrs P referred to health issues and said that having to constantly chase for almost a year had caused stress.

Amtrust's case-notes show that in September 2022, the sofa had deep scratches that had previously been repaired. The notes also record *'The individual scratches have not been filled, glued or sealed and the pigment does not match and is pink in colour'*. They show that new covers were therefore required, but when the covers arrived in April 2023, they were the wrong colour. The notes suggest that Mrs P had agreed to further repairs, but when Amtrust tried to arrange a date, Mr P said he wasn't happy to accept the repairs. In May 2023, Amtrust informed Mr and Mrs P that it couldn't supply covers due to the retailer's change in furniture range. It then offered two options, firstly to choose a new item from the retailer up to the value of the policy limit. This was the price originally paid, including 50% of the matching items, less previous repair costs of just over £100. It explained that the value of the original discount had been applied *'by dividing the amount across the number of seats purchased in that transaction.'* The second option was cash settlement at 50% of the reselection value.

Amtrust partially upheld the service complaint for the period March to May 2023 with an offer of £100 compensation and an apology for any distress or inconvenience caused. It acknowledged that the manufacturer had provided incorrect replacement parts. It said that the initial repairs had been carried out to Mr and Mrs P's satisfaction at the time of the repair. It also explained that the policy was indemnity-based, and any offers would not exceed the amount originally paid for items. It said it was unable to guarantee all repairs would be 100% successful and if they were to fail, it would look to an alternative resolution, as in this case.

Amtrust explained its figure of nearly £2,700 for a replacement sofa had been produced by applying a proportional discount figure to the sofa of just over £1,200 less a previous repair. As to the cash settlement option, it said this was limited to the equivalent cost of repair or replacement and that this was 50% of the reselection cost, due to its arrangement with the retailer. As to the deducted figure of just over £100, Amtrust said previous claims were deducted otherwise the total settlement would have exceeded the original purchase price. As to the investigator's view that Amtrust should add an element in relation to the swivel chair, Amtrust considered that the chair wasn't a matching item. It said it was *'a different model, a different fabric and a different colour.'*

Having considered all of the relevant submissions and evidence, I now turn to the reasons for my decision. The starting point is the wording of the policy as this forms the basis of the insurance contract between parties. Here, the relevant policy terms state, *'The most the Insurer will pay under this Furniture Protection Plan is limited to the original purchase price of your product.'* It also states that, *'If a repair cannot be achieved, we may choose to replace the damaged part. In the event of this not being possible, [Amtrust] may at its sole discretion provide a replacement product(s). Alternatively, [Amtrust] 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....'*

I consider that the terms and conditions of the policy are clear and that the maximum amount that will be paid out under the relevant policy is the original purchase price. On the available evidence, it's not possible to state how exactly the retailer apportioned discounts between the sofa and swivel chair. I consider that the retrospective apportionment applied by Amtrust to the sofa was fair and reasonable in assuming that the discounted price was just under £2,800. This would be the maximum replacement value which could therefore be applied under the policy. I note that it also deducted £100 for a previous repair.

I appreciate that Mr and Mrs P consider that the first repair had been unsuccessful and that they said that Amtrust's technician called it a 'bodged' repair which meant that the sofa could no longer be repaired. However, Mr and Mrs P hadn't initially complained about the first repair and the incident which prompted the current claim was related to an event in 2022. I therefore consider that a deduction of £100 for a previous repair was fair and reasonable. Bearing in mind the method of remedy under the policy was at Amtrust's discretion, I can't say that its offer of two options was unfair. Nor can I say that the apportioned value of just under £2,700 was unfair.

I note that the original sofa would have cost just over £4,000 before discount. There were further purchases at the time to include a swivel chair, the policy, fabric protection and delivery. I see that Amtrust offered a replacement sofa up to a value of nearly £2,700 or a cash settlement of nearly £1,350. To reach this figure, Amtrust had deducted just over £100 for the previous successful repair claim in August 2020. I note however that in its May 2023 letter, Amtrust also said that their reselection value included *'50% of the matching items'*. The figure of nearly £2,700 doesn't however include 50% of the purported matching items

In the circumstances, I agree with the approach the service's investigator had taken to apportion the discount provided for the original purchase between the sofa and swivel chair. This was also an approach which Amtrust had acknowledged as a valid approach. This meant that Mr and Mrs P had paid just under £2,700 for the sofa and just under £700 for the swivel chair. I agree with Amtrust from the sales invoice, that the sofa and swivel chair don't form a set or matching items. They are of a different make, fabric, and colour. It therefore appears that Amtrust's reference to *'including 50% of the matching items'*, was a mistake. However, by including this reference in their formal offer letter, I consider that it would now only be fair and reasonable for Amtrust to honour this offer and to pay 50% of the swivel chair cost, being just under £350 in addition to the cost of the sofa.

As for the alternative cash settlement offer of 50% of the reselection value. I note that Amtrust has stated that it doesn't have any evidence of the arrangement with the retailer and that this has never been a problem previously. It also attached a previous ombudsman decision which referenced this. However, Amtrust has been unable to provide any specific evidence in this case to support the argument that it would receive this discount. In addition, I consider that the terms and conditions of the policy don't make it sufficiently clear that a cash settlement will be limited in this way. A fair and reasonable outcome to this complaint in the circumstances is that Amtrust should offer a replacement sofa or a cash settlement of just over £3,000 (the specific amount being detailed in the final decision below). Whilst the

terms of the policy are clear that the choice of option is at Amtrust's sole discretion, it is clear that Amtrust offered the two options to Mr and Mrs P. I consider that it would be unfair and unreasonable for it to now limit this choice in the light of the substantive findings in this case.

As for Mr and Mrs P's complaint about service issues, I note that the manufacturer was unable to supply matching parts, and this contributed to avoidable delays in dealing with this matter. However, I also consider that Amtrust was responsible for certain delays and communication issues between March and May 2023. There had then been some confusion around whether further repair was possible and acceptable to Mr and Mrs P. I consider it entirely understandable that by this stage, Mr and Mrs P felt that a repair was no longer acceptable and that they were seeking an alternative solution. I can see that Mr and Mrs P had to chase Amtrust on several occasions and I can understand their frustration. In all the circumstances however, I'm satisfied that Amtrust's compensation offer of £100 for the distress and inconvenience caused to Mr and Mrs P was fair and reasonable.

My final decision

For the reasons given above, I uphold Mr and Mrs P's complaint and I require Amtrust Europe Limited to do the following in response to their complaint within 28 days of acceptance by Mr and Mrs P of this final decision:

- Amtrust to offer Mr and Mrs P the choice of a replacement sofa or a cash settlement to the value of £3,014.67
- Pay £100 compensation for the distress and inconvenience caused (if this hasn't already been paid)

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P and Mrs P to accept or reject my decision before 13 December 2023.

Claire Jones
Ombudsman