

The complaint

Mr and Mrs V's complaint is about a claim they made on their Amtrust Europe Limited ('Amtrust') legal expenses insurance policy.

All references to Amtrust in this decision include their claims handlers.

What happened

Mr and Mrs V made a claim on their Amtrust legal expenses insurance policy for cover to bring a claim against a building contractor.

Amtrust accepted the claim and passed it to one of its panel firms to consider. The panel firm initially said the claim had reasonable prospects of success and recovery. But after writing to the building contractor and not receiving a reply and making further enquiries, the panel firm determined that Mr and Mrs V's prospects of recovery in their claim fell below 51% as required by the policy.

As a result, Amtrust said they were no longer prepared to cover Mr and Mrs V's claim. Unhappy Mr and Mrs V complained to the Financial Ombudsman Service. They said the building contractor was still trading and that he has a company van and tools that could all be seized to cover the costs of their claim to conclusion. They're also unhappy that they've been left to run their claim from the start, endured delays and little support or advice. Overall Mr and Mrs V say they've been left £10,000 out of pocket and caused considerable distress and inconvenience.

Our investigator considered Mr and Mrs V's complaint and concluded it shouldn't be upheld. She said that Amtrust were entitled to rely on the opinion of the panel firm in this complaint and that it wasn't unreasonable for them to withdraw funding when they did. Mr and Mrs V don't agree so the matter has been passed to me to determine. In particular they say:

- The legal advice they received was that they had a claim for breach of contract.
- The building contractor was stacking jobs whilst working so he had funds in July 2022.
- The legal advice they received about when to start the claim against the building contractor and the delays in moving this forward meant that this altered the prospects of recovery and prevented them from obtaining cover from Amtrust, which would have been different if swift action had been taken. This has caused detriment to them.
- No checks were carried out to ascertain whether Mr and Mrs V were vulnerable consumers given they lost over £10,000 and a great deal of time at an emotional cost to them, which is still ongoing.
- Amtrust should accept the delays were caused by their agents and settle their claim by paying them the funds they're owed.

- The cost of the expert report could have been paid to them but instead was incurred despite apparently low prospects of recovery.

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 won't be upholding Mr and Mrs V's complaint. I'll explain why below. Before doing so, Mr and Mrs V should note that I will only be addressing the actions of Amtrust and not the panel firm of Solicitors in this decision. It's not within my remit to determine the actions of the panel firm of Solicitors. They are independent professionals with their own regulator and their own codes of conduct. If Mr and Mrs V remain unhappy with their actions, they can raise this with The Legal Ombudsman.

It's also important I explain that I can only consider this complaint as it was brought to us because that is all Amtrust would have had the opportunity to address. So, I'm not able to determine any additional matters that have arisen since that complaint was made or any new points that have been made from that point onwards.

Turning now to the crux of this complaint which is Amtrust's decision to decline cover. The starting point is the policy terms. It's a requirement of virtually all legal expenses insurance policies that any intended claim has a reasonable prospect of succeeding, which includes having reasonable prospects of recovery. In the case of Mr and Mrs V's policy, the requirement is that they have 51% prospects of achieving a positive outcome. An example of this is included in the policy in relation to recovering the amount of money at stake. That means Mr and Mrs V's claim needed to have over 51% prospects of succeeding and recovery in order for Amtrust to cover their claim.

We don't think this is unfair. Litigation can be expensive. A privately paying customer wouldn't want to bear the cost if advised they're unlikely to succeed or recover less than the sums they're likely to pay out in costs. We wouldn't expect a legal expenses insurer to fund claims in these circumstances either.

Where an insurer has declined funding in such a case, it isn't for us to evaluate the merits of the underlying claim. Instead, and as the investigator explained, we look at whether the insurer has acted fairly. So long as they have got advice from suitably qualified lawyers, we won't generally question their reliance on that advice, unless we think it was obviously wrong or based on factual mistakes. Amtrust did this.

I'm satisfied that the advice given was supervised by someone that was suitably qualified in the area of law Mr and Mrs V were asking for help with and I've seen nothing that suggests their advice was based on factual mistakes. I appreciate Mr and Mrs V don't agree with the advice they've received but that's not something I can consider. If they were to provide an alternative reasoned opinion from a comparable legal professional, then I would expect Amtrust to consider that. Equally, if they provided Amtrust with any new evidence or information that has now come to light that might change the outcome of their assessment on prospects of recovery, I would expect Amtrust to refer that back to their panel firm. But as matters stand, I can't say Amtrust did something wrong by relying on the legal opinion they received.

In this case I can see that although it was first confirmed the claim was one Amtrust would fund, there came a point where the panel firm became concerned about Mr and Mrs V's ability to recover anything from the building contractor, given the value of their claim and the fact that it would cost a considerable amount in costs to take things to conclusion. Evidence

was obtained in the form of a credit report, unpaid judgments and accounts were sought- but none were filed by the building contractor, nor did he reply to the letter of claim against him. Amtrust made further detailed enquiries about prospects of recovery to see if anything further could be done to help establish this, but the panel firm explained why they thought it was less likely that the claim had reasonable prospects of recovery. In particular they commented that the building contractor was a limited company and so the enquiries they'd made were relevant to that.

I appreciate that Mr and Mrs V don't agree with the way in which their claim was handled. They're not happy with the timing of the determination made by the panel firm or their advice. But that doesn't mean that Amtrust were wrong to rely on the advice given to them when turning down cover. As I said above, I can't comment on the actions of the panel firm and in particular the time it took them to deal with the claim. Amtrust isn't responsible for the way in which the panel firm handled Mr and Mrs V's claim or the advice they gave, the panel firm are. And from what I can see when Mr and Mrs V became concerned about this Amtrust did follow up with the panel firm as I would expect them to do. As I've said, if Mr and Mrs V remain unhappy, they will need to direct their complaint to them or the Legal Ombudsman.

Mr and Mrs V have made some additional comments in response to the investigator's view that Amtrust haven't had the opportunity to consider or respond to. This includes their submissions about being vulnerable consumers and the fact that the cost of obtaining expert evidence should have been paid to them. Because of this I won't be addressing these submissions further save to say that even if Amtrust had had the opportunity to address them, it's unlikely this would have made any difference to the outcome of this complaint because my decision is founded on this Service's longstanding approach to similar complaints.

My final decision

For the reasons set out above, I don't uphold Mr and Mrs V's complaint against Amtrust Europe Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs V and Mr V to accept or reject my decision before 13 March 2024.

Lale Hussein-Venn
Ombudsman