

The complaint

Mr Y's complaint is about a claim he made on his Amtrust Europe Limited legal expenses insurance policy.

Mr Y feels that Amtrust treated him unfairly.

In this decision all references to Amtrust include their claims handlers.

What happened

Mr Y purchased a property from a developer. After moving into the property, he discovered a number of defects, which caused him to commission a full survey. The survey revealed more problems that he wasn't aware of when buying the property.

Mr Y made a claim on his Amtrust legal expenses insurance policy for cover to bring claims against several parties connected with the problems he discovered with his property. Amtrust accepted the claims in the first instance. Mr Y wanted to use his own Solicitor. It was eventually agreed that this was something Amtrust would accept subject to terms of appointment being agreed and once litigation became necessary. Following this Amtrust reviewed everything once more and declined the claim.

Amtrust's position is essentially that the purchase of the property predated cover and the legal expenses insurance doesn't extend to situations like this because the breaches Mr Y wants to claim for occurred before cover was in place.

Mr Y doesn't agree that the position Amtrust have taken is reasonable. He says he wasn't aware of the problems he wants to claim for until after cover started, that claims in negligence would be covered and that Amtrust's initial acceptance of the claim meant it's now unacceptable for them to withdraw cover.

Our investigator considered Mr Y's complaint and concluded that it shouldn't be upheld. Mr Y doesn't agree, so the matter has been passed to me to determine.

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 will only be upholding Mr Y's complaint only to the extent that the offer of compensation made by Amtrust is adequate in the circumstances. I'll explain why below. Before doing so I wish to acknowledge the detailed submissions Mr Y has made in support of his complaint. Whilst I have read everything he's said and considered it, I won't be addressing everything he's raised. That's not intended to be disrespectful, rather it represents the informal nature of the Financial Ombudsman Service.

I've also noted Mr Y's request to discuss his complaint with me. I've considered that but am satisfied that I have everything I need to determine this complaint without doing so. I've also

noted Mr Y's request for guidance about what sort of evidence he can provide to support his position- presumably such that his complaint would be successful. That's not something either I or the Financial Ombudsman Service more generally can advise him on. We are an impartial service. Our determinations are based on the evidence provided by both parties. We are not able to advise on what evidence would strengthen a particular party's case when presenting it.

Turning now to the crux of Mr Y's complaint, the starting point is the policy terms.

The contract section of the policy covers:

"Costs to pursue or defend a legal action following a breach of a contract you have for:

- a) Buying or renting goods or services for your private use.*
- b) Selling your own personal goods.*
- c) Buying or selling your main home.*
- d) Renting your main home as a tenant.*

What is not insured:

Claims

- a) Where the breach of contract occurred before you purchased this insurance."*

Mr Y's legal expenses insurance policy started in August 2020. Mr Y purchased his property in 2019. So, any claim for breach of contract would amount to breaches in relation to the sale of the property. These predate cover and are therefore not covered. Whether Mr Y discovered the defects after cover was in place are in this case immaterial because there was no cover in place when the breaches occurred. If he had continuous cover in place at the time he purchased the property, I might have reached a different conclusion, but from what he's said this was not the case. As such any claims for breach of contract do not fall within cover and Amtrust were entitled to decline any claims for this accordingly.

Mr Y says his claim is not in contract but rather tort. He says the claim against the developer is for misrepresentation. Misrepresentation can be a claim in both contract and tort. I've set out why any claims in contract do not fall within cover. The only section of the policy that extends to claims in tort is the property damage section. That covers:

"Costs to pursue a legal action:

- a) for damages against a person or organisation that causes physical damage to your main home or your personal effects.*
- b) For nuisance or trespass against the person or organisation infringing your legal rights infringing your legal rights in relation to your main home.*

What is not insured:

Claims....

- c) In respect of a contract you have entered into."*

I don't think the policy covers physical damage to Mr Y's home by the developer because Mr Y didn't own the property when the developer built it. And when he did come to own the property, any claim he had against anyone for defects to it arose out of the contract he entered into to buy it. So even if Mr Y's claims could be considered to fall into physical damage to his main home, they would be excluded by virtue of the fact that they were entered into pursuant to a contract. And for the reasons I've set out, disputes arising out of that contract aren't covered because it predated the start date of the policy.

Mr Y is also claiming for a transfer of land that he says didn't happen correctly which forms part of the action he wants to bring. I've considered this but I don't think there's cover for this specific claim under the policy terms at all as it doesn't appear to fall within any of the

sections of cover available under the legal expenses insurance policy.

Mr Y has made various submissions about the law relating to Practical Completion Certificates and the Limitation Act 1980. I've considered these but they make no difference to my interpretation of the policy terms as they stand in relation to the claims he wants Amtrust to cover. Whilst there may be considerable merit in his claims and a perfectly legitimate legal basis for them, I can't say that anything I've seen makes me think they fall within cover.

Turning now to Mr Y's submission that Amtrust led him to believe his claim was covered and so it's now unfair they should decline his claim. I accept that matters unfolded in a way that Mr Y was led to believe cover was available for his claim. It was accepted in the first instance and discussions had taken place about the appointment of his own Solicitors once proceedings were necessary. Amtrust also accept that they should have picked up on the fact that these were not claims that were covered under the policy sooner. So, it's not in dispute that Amtrust did something wrong here. But that doesn't mean that Amtrust were not entitled to decline the claim when they realised the breaches predated the start date of the insurance. Legal expenses insurance is subject to various terms and conditions. Based on those, cover could be withdrawn at any point. When an insurer makes a decision to do so, we look at whether they were entitled to withdraw funding and if the way in which they have done so has caused a policyholder detriment. I've already set out why I think Amtrust were entitled to withdraw funding, so the issue remaining is whether they caused detriment to Mr Y in doing so.

Mr Y says that had he known funding would have been withdrawn, he wouldn't have incurred the expense of instructing his own Solicitor to act for him before proceedings became necessary, at which point he was led to believe that funding would respond. He has referred to the comments made to him by Amtrust during a call with them in March 2023 which he feels support that he relied on their assertions when making a decision about whether to instruct his own Solicitor.

I've considered that call and the comments Amtrust made to him. Whilst I accept that the possibility of cover being later withdrawn were not drawn to Mr Y's attention, I don't agree that he would've decided to do something differently had it been. I say so because the comments Amtrust made to him during that call didn't in any way guarantee payment of his legal fees for the duration of the claim. And as I've said the insurance was subject to various terms and conditions that meant cover could be withdrawn for several reasons during the life of the claim. The other matter of note was that Mr Y made clear during the call that he was going to use his own Solicitor despite Amtrust pointing out that *"if you do use him, you would be paying for all of his fees"*. Whether Mr Y thought that was short term situation or not is immaterial in my view. The fact is that he knew he would be liable for those fees and chose to incur them anyway. So, I don't think it's down to Amtrust to cover them now. Amtrust have offered Mr Y £100 for the trouble and upset caused to him in not identifying there was no cover available for his claims sooner. Given the claim would always have been declined and it is my finding that Mr Y was prepared to incur his own fees anyway, I think this is adequate compensation for the stress the late decline in the claim caused Mr Y. So, I think their offer of compensation is fair.

Putting things right

Amtrust should pay Mr Y the sum of £100 in compensation if they haven't already done so.

My final decision

For the reasons set out above, I uphold Mr Y's complaint against Amtrust Europe Limited

and direct them to put things right as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr Y to accept or reject my decision before 22 May 2024.

Lale Hussein-Venn
Ombudsman