

The complaint

Ms A and Mrs A are unhappy with what Amtrust Europe Limited did after they made a claim on their landlord legal expenses insurance policy.

Although the policy is in joint names, as the complaint has been brought by Mrs A, I'll refer to her in this decision.

What happened

In November 2022 Mrs A contacted Amtrust as she wanted her policy to assist in taking possession proceedings against her tenants. After gathering information about the claim Amtrust referred the matter to panel solicitors for them to progress (subject to the claim enjoying reasonable prospects of success – a requirement of the policy). At a possession hearing in April 2023 the court ordered the tenants should file a defence and any counterclaim by 5 May 2023 and a response to that should be filed by 26 May.

On receipt of the defence and counterclaim the panel firm sought comments from Mrs A. She provided information including from the current and managing agents of her property. The panel firm advised on 17 May that it didn't have all the information it had requested but based on the evidence it did have there appeared to be disrepair issues at the property which had been identified and not rectified. They advised the possession claim had prospects of success of well below 50%.

As a result, Amtrust said it wouldn't be providing further funding for the claim. The panel firm recommended Mrs A instruct a local firm of solicitors to agree settlement with the defendant. I understand Mrs A in fact instructed an alternative firm to file a response to the defence and counterclaim and proceedings have continued.

Our investigator felt Amtrust was entitled to rely on the prospects assessment the panel firm produced. However, she thought it should have provided some interim funding to enable Mrs A to seek advice or support with her dispute rather than withdrawing assistance with immediate effect. And because Amtrust hadn't done that Mrs A had to obtain assistance from an alternative firm which cost her £1,800. She thought Amtrust should reimburse her for that amount (plus interest) and pay £100 compensation for the distress and inconvenience it caused. But she didn't think Amtrust needed to fund any further costs Mrs A then incurred because the claim had been assessed as not having reasonable prospects of success and Mrs A hadn't provided a contrary legal opinion of her own.

Amtrust didn't agree. It said the change in the claim's prospects of success came about at a late stage because the panel firm were waiting for Mrs A to provide information. It didn't think it should be expected to pay costs where the insured hadn't been proactive in providing information; if Mrs A had done so the prospects requirements might have been met. And the policy terms required her to "*supply all information requested by the adviser and us*"

Mrs A thought she should be reimbursed for the full solicitors costs she'd need to pay along

with additional compensation for the distress she'd been caused. So I need to reach a final 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.

The relevant rules and industry guidelines say Amtrust has a responsibility to handle claims promptly and fairly. It shouldn't reject a claim unreasonably.

I've looked first at the terms and conditions of Mrs A's policy. This does require that a claim must enjoy reasonable prospects of success. It says "*there must be more than a 50% chance of winning the case and achieving a positive outcome*". Our long standing approach is that as an insurer isn't a legal expert we don't think it's in a position to carry out that assessment. It should be carried out by a suitably qualified lawyer with relevant experience.

Where that has been done we think it's reasonable for an insurer to rely on a properly written and reasoned legal opinion when deciding whether a claim has prospects of success or not. I can see Mrs A's policy reflects that approach as it says "*At any time We may, but only when supported by independent legal advice, form the view that You do not have a more than 50% chance of winning the case and achieving a positive outcome. If so. We may decline support or any further support*".

In this case the panel solicitor dealing with the claim did advise in May 2023 that, having reviewed the defence and counterclaim and the information Mrs A had been able to provide, she didn't think the case did have prospects of success. I appreciate Mrs A may disagree with that opinion but I think it is properly written and reasoned and from someone qualified to provide it. So I don't think Amtrust did anything wrong in deciding that Mrs A's claim no longer met the requirements of her policy for funding to be provided.

However, even where that's the case, if proceedings are ongoing I don't think it's reasonable for an insurer to simply withdraw cover without warning leaving a policyholder immediately without support. I'd normally expect to see some limited funding provided to, for example, enable a consumer to engage in some negotiation with the other side to bring matters to a conclusion.

I think that's particularly relevant in this case where there was a court imposed deadline for Mrs A to provide a response to the defence and counterclaim. And it reflects the advice the panel solicitors gave Mrs A which was to instruct a local firm of solicitors to agree settlement with the defendant. I think that's something which Amtrust should have funded. But it didn't do that. And that left Mrs A in a position where she was unrepresented and needed to seek urgent advice about next steps in relation to the ongoing proceedings.

I appreciate that in seeking that advice her intention appears to have been to progress her claim rather than to enter into negotiations with the other side. However, I think it likely that in order to protect her position and to facilitate negotiations with the other side Mrs A would always have needed to provide a response to the defence and counterclaim.

So that's action that Amtrust would likely have needed to fund if it had acted as it should. I recognise Mrs A's costs are likely higher than those Amtrust would have incurred because the solicitors she approached needed to familiarise themselves with the case. But as the only reason Mrs A needed to contact those solicitors was because Amtrust hadn't provided funding it should have done I think that is something it should be responsible for.

Amtrust has suggested Mrs A only needed to approach her own solicitors because she didn't provide the information the panel solicitors were asking for and it isn't responsible for that. I understand Amtrust's concerns but I don't think that's a fair characterisation of what happened. I can see the panel solicitor initially asked Mrs A for information on 5 April following the possessions hearing and she immediately contacted her letting agents who responded the following day.

The panel solicitors then contacted Mrs A again following receipt of the defence and counterclaim at the start of May. And they asked detailed questions in relation to this. Again Mrs A immediately referred those queries to her agents who provided a response, including case history system notes, on 12 May. The panel solicitors raised further queries. There was then a delay in Mrs A responding but that appears to have been because she was out of the country. She advised on 17 May that was the case (and said the panel solicitors were already aware of this) and she'd be able to respond by 20 May by which time she'd have access to her file.

I appreciate the solicitors needed to progress matters and didn't have enough information to conclude the claim would have reasonable prospects of success when they then contacted Amtrust. But I think Mrs A was trying to address the points raised and I don't think it's fair or reasonable to say she was in breach of the policy terms as they relate to providing information. I can understand why if Mrs A was out of the country that would have caused her difficulties in providing a response to the panel solicitors.

Finally, Mrs A thinks Amtrust should be responsible for further costs she then incurred (and may incur) in progressing her claim. But I don't agree with her on that. Amtrust was entitled to withdraw funding for her claim because it no longer enjoyed reasonable prospects of success. And if Mrs A wanted to challenge that decision she'd need to provide a positive legal opinion of her own on the claim's prospects of success which I understand she hasn't done to date. So it doesn't need to provide assistance with her ongoing legal costs.

Putting things right

I think Amtrust should have provided some limited funding for Mrs A to agree settlement of her claim. Because it didn't I think she reasonably had to seek alternative legal advice. And I think it's fair Amtrust reimburse her for the amount she paid for that (£1,800) plus interest at 8% simple from the date of payment until the date of settlement.

If Amtrust considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mrs A how much it's taken off. It should also give Mrs A a tax deduction certificate if she ask for one, so she can reclaim the tax from HM Revenue & Customs if appropriate

I also think Mrs A will have been caused some distress and inconvenience by what Amtrust got wrong for which a payment of £100 is appropriate. I appreciate Mrs A feels she should receive additional compensation for the distress caused by the decision to withdraw funding for her claim. But while I don't doubt that will have been upsetting, for the reasons I've explained that was a decision Amtrust was entitled to reach. So any additional distress that caused Mrs A didn't come about as a result of something Amtrust got wrong. And that isn't something it needs to compensate her for.

My final decision

I've decided to uphold this complaint. Amtrust Europe Limited will need to put things right by doing what I've said in this decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms A and Mrs A to accept or reject my decision before 14 June 2024.

James Park
Ombudsman