

The complaint

Mrs T's complaint is about a claim she made on her Amtrust Europe Limited ('Amtrust') legal expenses insurance policy, which Amtrust declined to cover.

Mrs T says Amtrust treated her unfairly.

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

Mrs T has brought her complaint through a representative, but I shall refer to all submissions as her own for ease of reference.

What happened

In June 2023 Mrs T made a claim on her Amtrust legal expenses insurance policy for cover to deal with a dispute with her neighbour. Amtrust considered the claim and concluded it wasn't one that fell within cover because the problems complained about started within the first 180 days after cover commenced, and this was excluded by the policy.

In particular Amtrust said Mrs T's policy started on 31 October 2020 and the problems with Mrs T's neighbour started in 11 February 2021 when it was noted by Thames Water that the neighbour's tree roots that were causing damage to Mrs T's land and the fence between the properties was moved on 24 April 2021.

Mrs T didn't agree. She said the problems with her neighbour that were the subject of her present claim were different to the problems she'd previously claimed for in April 2021. In particular she said the issue in 2021 was in relation to problems with her neighbour neglecting their plants which grew over the fence and eventually affected a Thames Water manhole cover and her land. She also said the subject of the present claim was when her neighbour instructed a workman to build decking and attach it to her fence without planning permission and in breach of building regulations in June 2023. In addition, she said the workman dug away at her driveway which had initially been damaged by the neighbour's overgrown trees. Mrs T says she needed to remove her fence to rebuild her driveway, but her neighbour kept attaching things to it which she refers to happening in March 2022.

Amtrust didn't agree that the problems were new. They said that although there were new incidents between Mrs T and her neighbour, they were a continuation of the same series of events and the policy will deem an insured incident to have arisen from the first in that series. Amtrust thought the first in that series fell within the first 100 days of the policy which wasn't covered because of the 180-day waiting period.

Unhappy Mrs T referred her complaint to the Financial Ombudsman Service. In addition to the matters raised she said it took Amtrust 20 weeks and 2 days to provide their final response letter and that she was unhappy with the delay.

Our investigator considered Mrs T's complaint and concluded that it shouldn't be upheld. She agreed that it was reasonable for Amtrust to interpret the incidents as arising from the first in a series of events and that this fell within the policy's waiting period. As such she

thought that Amtrust were entitled to decline Mrs T's claim in the way that they did. The investigator also said that a delay in receiving a final response letter wasn't a regulated activity we could consider on a standalone basis so wasn't something we could comment on.

Mrs T didn't agree. Before the matter was passed to me to consider, another investigator reviewed her complaint and agreed that it shouldn't be upheld for the same reasons as the first investigator. In his view the second investigator said that even if it was unfair for Amtrust to rely on a 180-day exclusion, we would consider it fair for them to apply at least 90 days of that exclusion and this was also applicable in this case. In addition, the investigator said that the policy wouldn't extend to events that started before the policy was in place. He also addressed some additional complaints Mrs T had. He said that although she might have been told by Amtrust's legal helpline that the claim had against her neighbours, or their builder might be considered 'criminal damage' her cover only extended to specific causes of action and Amtrust applied the most appropriate areas that cover extended to her claim in this case. The investigator also said that Amtrust hadn't done anything wrong when explaining that Mrs T's policy wouldn't cover her for anything that was insured under another policy.

Mrs T 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 don't uphold Mrs T's complaint. I'll explain why.

The starting point is the policy terms. They cover an Insured Incident which takes place in the period of insurance. 'Insured Incident' is defined as:

"The incident, or the first of a series of incidents, which may lead to a claim under this insurance. Only one insured incident shall be deemed to have arisen from all causes of action, incidents or events that are related by cause or time."

In this case Amtrust took the view that the claim Mrs T wanted to make in 2023 arose from events that are related by cause or time to those she claimed for back in 2021. I'm inclined to agree with that. It's clear that Mrs T had several problems with her neighbours in relation to the boundary fence and tree roots that were causing damage to her property. Overall, there were a number of issues of trespass she was complaining of that dated back to 2021, so although the nature of those issues might have changed over time, I'm satisfied that they started as early as, and most likely before Thames Water provided a report to show the there was damage to her land as a consequence of her neighbour's tree. As such I take the view that the events Mrs T claimed for in 2023 were 'Insured Incidents' which fell within her 2020 policy and not separate claims that should be considered as distinct from the matters claimed of in 2021. Based on that, I've gone on to think about whether Amtrust were entitled to apply the waiting period they have to turn down Mrs T's claim in this case.

The policy excludes claims:

"where the nuisance or trespass started within the first 180 days after you first purchased this insurance unless you have held equivalent cover with us or another insurer continuously for a period of at least 180 days leading up to when the nuisance or trespass first started".

In this case Amtrust say that that the trespass started within the 180-day waiting period because in February 2021 Thames Water produced a report which said the cause of the

damage to Mrs T's land was the neighbour's tree roots which were trespassing on her land. I'm not sure what prompted that report as I haven't seen the correspondence or a description of what happened before it was produced. Whatever the case, I think it's unlikely that the report was produced without Mrs T having any knowledge of at least the problems being caused to her land. And given what she's said about there being historic problems between her late husband and the neighbours in relation to her land, coupled with the fact that something would most likely have predated the Thames Water report- like for example a request for investigation- I think the claim for trespass, if not nuisance, would have fallen into the earlier part of the waiting period applied by Amtrust. So even if I took the view that the application of the 180 days was unfair, I think that on balance, the trespass or nuisance complained of here started well in advance of that, such that we would consider it fair for Amtrust to apply at least half of the waiting period here. Because of this, I don't think it was unfair for Amtrust to turn down cover in the way that they have. And whilst I'm very sorry to hear about the impact of not having cover on Mrs T and her family, I can't say that this is because of something Amtrust did wrong.

Turning now to Mrs T's other complaints. I realise Mrs T feels her claim should have been considered as criminal damage to her property and not as a nuisance or trespass. In particular she says Amtrust's legal helpline told her that this is what it would amount to. I don't have a call recording of the conversation Mrs T refers to, but I don't think Amtrust's legal helpline would necessarily have had access to her policy terms to determine what cover was available. Their role is to provide general legal advice where possible. Looking at Mrs T's policy terms, the only cover available that would apply to the claims she was making was for property infringement and property damage- and these claims are caught by the waiting period I've referred to above. There is no other cover available under the policy that might extend to covering Mrs T in the circumstances.

Mrs T has also complained about Amtrust saying she'd need to pursue her claim through her home insurance policy. Mrs T's policy doesn't extend to situations where cover is available elsewhere. I can see that Amtrust told her this in June 2023, but they didn't decline her claim outright, rather they said that if her fencing was damaged, she would need to claim for this under her home insurance policy. I don't think that was unreasonable, particularly because Amtrust didn't close the claim at that point. Rather they asked for more information if Mrs T's home insurer wasn't able to deal with the damage element of it. Amtrust were in my view entitled to do this. So, I can't say they did anything wrong.

Mrs T takes issue with the time it took Amtrust to deal with her claim. As the two investigators have explained, I can't consider the way in which Amtrust handled her complaint as a standalone complaint because this isn't something that falls within the Financial Ombudsman Service's remit.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs T to accept or reject my decision before 28 August 2024.

Lale Hussein-Venn
Ombudsman