

The complaint

Mr and Mrs P complain about the way Amtrust Europe Limited has dealt with a claim on their legal expenses insurance policy.

Where I refer to Amtrust, this includes its agents and claims handlers acting on its behalf.

What happened

Mr and Mrs P have legal expenses cover added to their home insurance. Mr P made a claim on the policy to cover the costs of a dispute with their neighbour. As he made the claim and has dealt with the correspondence, I'll refer to him throughout the decision.

Mr P was unhappy about how long it was taking to deal with the claim and how it was assessed. He made a previous complaint which we dealt with, asking Amtrust to arrange for solicitors to carry out an assessment of the prospects of success of Mr P's legal case.

Amtrust arranged for an assessment to be done. The legal advice was that the prospects of success were 60% but the value of the case meant it would be dealt with in the small claims court. Amtrust said this meant the case was not proportionate so it wouldn't cover all the legal costs of the case, but it would cover the court fees if Mr P wished to pursue the case in the small claims court himself.

Mr P complained again. Amtrust said its offer to fund Mr P issuing the claim in the County Court was fair, but it accepted it hadn't dealt with claim very well, particularly by not explaining what the next steps were once it had the prospects assessment, and offered £100 compensation. Mr P wasn't happy with this and referred the complaint to our Service.

Our investigator's view was that although Amtrust hadn't agreed to pay the claim value, it said it would offer further assistance up to the value of the claim and pass the case to one of its panel solicitors. Funding a panel solicitor up to the value of the claim would ensure Mr P receives the cover he's entitled to from the policy and the investigator thought this was a reasonable offer. But he said Amtrust should also pay compensation of £200 in total.

Amtrust accepted the investigator's view but Mr P didn't agree. He requested a payment of the value of the claim, which was £1,460, plus £100, making a total of £1,560.

The investigator put this proposal to Amtrust. It said

- it had received an underwriting decision and was unable to pay the value of the claim
- but it had instructed solicitors to conduct a legal assessment and providing all other policy terms and conditions were satisfied, would provide proportionate funding of the claim.

The investigator said the option to pay a cash settlement for the claim value is at Amtrust's discretion. As Amtrust had agreed to deal with the claim under the terms of the policy, he thought the way it was proposing to settle the claim was fair.

Mr P didn't agree. He said:

- It's not clear why Amtrust is obtaining another prospects assessment as that has already been done. The claim was referred to the same solicitors a year ago – it seems to be back at square one and starting the whole process again. They are going round in circles.
- Due to the time spent on this already, they no longer wish to pursue legal action. They would prefer to receive a cash settlement of the claim value.

As no agreement was reached, the complaint was passed to me. I issued a provisional decision saying I intended to uphold the complaint. I set out my reasons for this as follows:

Mr P has made a previous complaint, which we have dealt with. I'm not reconsidering those issues and this complaint only deals with how Amtrust has dealt with the claim since we asked it to obtain a legal assessment of the prospects of success.

The relevant industry rules and guidance say insurers must deal with claims promptly and fairly, support customers to make use of their policy and not unreasonably reject a claim. They should settle claims promptly once settlement terms are agreed.

As with almost all legal expenses insurance, the policy terms say cover will only be provided if the case has reasonable prospects of success, which is defined as:

"Where we consider there is a 51% and above chance of succeeding with your claim and enforcing any award and that it would be reasonable to advise any private paying client in the same circumstances to pursue the claim."

Amtrust obtained an assessment from a barrister and this confirmed the claim is likely to succeed – he put the chances at 60%. Since there is a positive assessment, there's no reason for Amtrust to ask solicitors to do this again.

The case has reasonable prospects of success. The assessment doesn't set out the costs but the value of the claim is low, costs would likely exceed that and if it's pursued in the small claims court, Mr P wouldn't be able to recover costs even if he's successful. It wouldn't be reasonable for a privately paying client to incur all the legal costs of pursuing the case.

Applying the policy term, it wouldn't be reasonable to expect all the costs to be covered in these circumstances. So I wouldn't expect Amtrust to provide cover for all the costs of the case. It has offered to cover costs up to the value of the claim and that's reasonable in the circumstances.

The policy terms say Amtrust may "decide not to commence or to terminate a legal claim at any time and pay you up to or equal to the amount that you are claiming for or the amount being claimed against you." So instead of covering the legal costs, Amtrust may choose to pay the value of the claim. That's what Mr P would like it to do, but this is something for Amtrust to decide, not something it is required to do.

When making that decision, however, Amtrust should exercise its discretion fairly. Amtrust says it considered paying the value of the claim but underwriters didn't agree. It hasn't given any details of why this was. And if it's prepared to pay costs up to value of claim, it's unclear why it wouldn't pay the value.

If Amtrust can explain why not it has decided not to pay the value of the claim, the offer to cover solicitors' costs up to value of the claim is a fair way to settle. But there is no need for a further prospects assessment – the case has reasonable prospects. So it should appoint

the solicitors to represent Mr and Mrs P and cover their costs up to the value of the claim (in line with the remaining policy terms).

While Amtrust has now offered to cover the claim, when the prospects assessment was issued it didn't explain to Mr P what would happen next. Bearing in mind the previous delays, it should have made things clear to him and avoided further delay and confusion. Amtrust has acknowledged it didn't deal with this well and accepted the recommendation to make a further payment of £100 in addition to the £100 already offered. I agree it should compensate Mr and Mrs P for the distress they have been caused and £200 is fair.

Replies to the provisional decision

Mr P has not provided any further comments.

Amtrust has replied and says:

- The condition in the policy allowing it to pay the value of the claim is entirely at its discretion - the policy provides cover for legal costs and it has no obligation to pay the claim off.
- Prospects were confirmed for a claim value of around £1,200 so it referred the matter to panel solicitors but Mr P didn't respond to the solicitors, so they closed their file.
- If Mr P wishes to pursue the claim as a litigant in person it would happily pay the £80 court issue fee and the hearing fee. So there is a proportionate option available for Mr P to pursue the case.
- It endeavours to act in a fair and reasonable manner. It's a common approach to offer to cover court fees (irrespective of any policy terms offering to settle a claim) and it would be unfair to act differently for an individual customer.

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.

Amtrust has explained why it didn't agree to pay the value of the claim. As I explained in my provisional decision, this is in Amtrust's discretion not something it's required to do and it has now explained how it reached that decision.

Amtrust says it will offer to cover the court fees if Mr P wishes to pursue the case himself through the small claims process. It previously offered to cover his costs up to the value of the claim and it remains my view that would be fair.

It's not clear if Mr P still wants to pursue the case. If he does, he will need to let Amtrust know and contact the solicitors.

Putting things right

Amtrust needs to

- cover the legal costs up to the value of the claim, in line with the remaining policy terms - if Mr P confirms he wishes to pursue the case; and
- pay compensation of £200.

My final decision

My final decision is that I uphold the complaint and direct Amtrust Europe Limited to take the steps and pay the compensation set out above.

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 23 October 2024.

Peter Whiteley
Ombudsman