

The complaint

Miss Z is unhappy with what Amtrust Europe Limited did after she made a claim on her legal expenses insurance policy.

What happened

Miss Z contacted Amtrust in January 2024. She sought assistance from her policy with a judicial review (JR) she'd made against her local authority. That related to an emergency rehousing application she'd made following an attack on her daughter in October 2022 by local authority tenants. She also wanted assistance with a claim against the local authority relating to its failure to take action against anti-social behaviour (ASB) by those tenants.

Amtrust said the policy didn't cover JR applications. And it said as the ASB issues began before the start of her policy (September 2022) they weren't covered by it. It accepted the attack in October 2022 happened when cover was in place but didn't agree this could be seen as an isolated incident and thought it was likely a culmination of the events that preceded it. So it didn't consider Miss Z's claim was one her policy would cover.

Our investigator agreed the policy didn't cover a JR application. In relation to the ASB claim she accepted matters had escalated in October 2022. But she noted there had been previous incidents where the tenants had threatened Miss Z and her family. And it was clear that ASB from the tenants had been ongoing for a number of years (and so prior to the policy start date). She didn't think Amtrust acted unfairly in turning down the claim.

Miss Z didn't agree. She confirmed she wasn't seeking funding for the JR hearing. And in relation to the ASB issues:

- She couldn't have known prior to taking out her policy that the serious criminality which took place in October 2022 would take place even given the previous ASB from the council tenants. This was a totally new and extreme event that didn't resemble their previous actions. She asked what evidence supported the fact this was related to their previous behaviour. She thought the only connection was that the same tenants were involved.
- She said if Amtrust's position on the claim was correct that would mean her property was uninsurable in relation to any future damage which the council tenants might cause to it or a claim for losses relating to the ASB.
- And she provided an example relating to corroded water pipes which subsequently burst due to high pressure which she thought was analogous to the situation here and would mean cover should be provided.

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 Miss Z's policy. The legal expenses section says there is no cover for any claim directly or indirectly arising from "*an application for judicial review*". So I think it's clear (and Miss Z has now accepted) that funding for her JR application isn't something the policy would provide.

In relation to the issues associated with her ASB claim the policy does provide cover for "*Costs to pursue a Legal Action for nuisance or trespass against the person or organisation infringing Your legal rights in relation to Your main home*". It also covers "*Costs to pursue a Legal Action following an accident resulting in Your personal injury or death against the person or organisation directly responsible*".

However, it's not clear to me that the claim Miss Z is seeking to make would fall within one of those (or any other) insured events the policy covers. Based on the information she provided she isn't seeking to bring a claim against the tenants responsible for the ASB but against the local authority which housed them. She doesn't feel it took appropriate action in response to the concerns she raised about their conduct.

But as it isn't the local authority which is itself causing the ASB I'm not clear it would be "*directly responsible*" for any personal injury claim. And while I appreciate Miss Z is seeking to hold it liable for the actions of its tenants for the claim to be covered under property infringement she'd need to show that organisation was the one infringing her legal rights. I've not seen clear evidence in support of that position.

So it's not clear to me Miss Z's claim is one her policy would cover at all. However, I don't think I need to reach a finding on that because even if she was able to show that was the case the policy doesn't provide cover where "*You should have known when buying this insurance that the circumstances leading to a claim under this insurance already existed*".

And based on the information she's provided Miss Z's claim is that her local authority didn't take effective action to deal with the ASB from its tenants. That's led to physical and psychological injuries as well as a loss of property enjoyment which forms the basis of her claim against it. But I think it's clear those issues were ongoing at the point she took her policy out in September 2022.

Miss Z acknowledged in her correspondence with Amtrust that the ASB had been ongoing for six years. And in considering her JR permission application the judge noted that her claim form "*makes many complaints about the behaviour of the tenants ... including of criminal conduct, violence and of persistent and serious anti-social behaviour continuing over about five years since March 2018*". And he says the first principal complaint is that the local authority hasn't taken action to control the tenants.

That in essence appears to be the claim Miss Z is seeking funding for. But given the length of time the ASB has been ongoing for and the references she's made to her repeated attempts to get the local authority to take action I'm satisfied she was aware of the circumstances leading to her claim when she took this policy out. I appreciate there was a significant escalation in the ASB from the tenants in October 2022 and that may well have been a change to their previous behaviour. I recognise Miss Z may not have anticipated that happening when she took out her policy. But that doesn't change the nature of her claim against the local authority. The issue there remains that it failed to take effective action to deal with the tenants. That's something Miss Z was aware of prior to taking out her policy.

Miss Z has queried what the position would be with future insurance she might take out. That would obviously depend on the terms and conditions of that policy and the circumstances at the time. But it's a general principle of insurance that it covers unforeseen events. So it's unlikely any policy she did take out would provide cover for a problem she already knew about. Miss Z has also provided an analogy with water pipes and a failure by the water company to take action in relation to that. I'm not sure that is analogous to her current situation. But in any event it's the facts of this case that I'm considering. And I've explained in this decision why I think Miss Z was aware of the issues giving rise to her claim prior to taking out her policy. As a result I don't think Amtrust acted unfairly in declining her claim.

My final decision

I've decided not to uphold this complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Miss Z to accept or reject my decision before 3 December 2024.

James Park
Ombudsman