

The complaint

Mr and Mrs A's complaint is about the service they received from Amtrust Europe Limited ('Amtrust') when they made a claim on their legal expenses insurance policy.

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

What happened

Mr and Mrs A had a problem with a tree belonging to their neighbour which they were concerned would cause damage to their property. They contacted Amtrust, their legal expenses insurer, to discuss this.

Amtrust's legal helpline considered the problems as well as a number of queries raised by Mr A about a potential claim on his legal expenses insurance policy. During the call Mr A asked about whether pursuing a letter being written to his neighbour through his legal expenses insurer would amount to a claim on his home insurance policy. The advisor replied that it would not.

Mr and Mrs A were then sent a claim form to complete in relation to the problem with their neighbour's tree, which they filled in and returned to Amtrust, together with supporting documents. Amtrust considered their claim and declined it on the basis that the events that led to the claim began before the policy was in place.

Mr and Mrs A are unhappy about a number of things. They say they were later told by Amtrust that the claim they made on their legal expenses insurance policy would be recorded as a claim against their home insurance policy, which was at odds with what they were initially told. They also take exception to Amtrust's reference to the damage to their property being caused by the neighbour's tree as being substantial which they say is incorrect and needs to be removed from their records. Mr and Mrs A feel that Amtrust should compensate them for the distress caused to them as a result of their actions.

Our investigator considered Mr and Mrs A's complaint and concluded that it should be upheld. She clarified that Amtrust did provide conflicting and confusing information about what would be recorded against Mr and Mrs A's home insurance policy in terms of a claim if they pursued the legal expenses insurance claim. But as there was no evidence that this had a negative impact on Mr and Mrs A (such as their legal expenses insurance claim being recorded against their home insurance policy) she restricted the compensation payable being in respect of the stress and worry this caused Mr and Mrs A. The investigator said Amtrust should pay them £100 in recognition of this. She didn't uphold any of the other elements of Mr and Mrs A's complaint.

Amtrust accepted the investigator's view, but Mr and Mrs A have not. As such 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 think Mr and Mrs A's complaint should be upheld for broadly the same reasons and in the same way set out as the investigator in her view.

Before I explain why, I wish to acknowledge Mr and Mrs A's strength of feeling about their complaint and the volume of submissions they've made. Whilst I've read everything they've said, I don't intend to address it all. That's not intended to be disrespectful but rather represents the informal nature of the Financial Ombudsman Service.

I've listened to the two recordings of the calls Mr and Mrs A had with Amtrust. It's clear to me that the information they were given about whether a legal expenses insurance claim would be recorded against their home insurance policy was inconsistent. Amtrust have since told us that it's possible the home insurer may log a legal expenses insurance claim for their records, but this would not affect the renewal premium and would not record as a claim for their purposes. Amtrust have also said they can't confirm with certainty whether anything has been logged by a home insurer at all on Mr and Mrs A's records.

Mr and Mrs A have not provided anything to confirm that a claim has been recorded against their home insurance policy when they were assured it wouldn't be by Amtrust. Amtrust are their legal expenses insurer and not their home insurer so I can understand why Amtrust don't know with certainty what a home insurer's records would reflect. In the absence of anything from Mr and Mrs A to suggest that an adverse claim has been recorded against their home insurance, I'm not satisfied that there has been any considerable detriment to them in the way of an increase in policy premiums, which might have been avoided had they chosen not to pursue the legal expenses insurance claim. So, whilst I agree that Amtrust did something wrong here, I don't consider the impact of their actions to be so substantial that it warrants a higher award than that set out by our investigator.

I appreciate Mr and Mrs A feel that the information they were given caused them an unbearably awful level of confusion and distress and therefore that Amtrust should pay them more to compensate them for this. When taking into account the impact of Amtrust's actions, I'm not satisfied that they amounted to anything more severe than some confusion, which Mr and Mrs A could well have clarified by asking their home insurer whether a legal expenses insurance claim had been recorded against their policy. They would have been best placed to ask this question of their insurers and their home insurers would have been in a better position to confirm this to them. So, I think the sum of £100 is adequate compensation in this case.

Turning now to whether Mr and Mrs A made a claim at all on their legal expenses insurance policy. When Mr and Mrs A initially complained to Amtrust, they said they said they weren't actually making a claim but seeking assistance to prevent any future damage to their property. I've listened to the initial call Mr A had with Amtrust and considered the claim form he and Mrs A completed, and I'm not satisfied they didn't understand they were making a claim on the policy. Whilst what they were seeking was for a letter to be sent to their neighbour, rather than Court action, this still amounted to a claim on their legal expenses insurance policy which was intended to cover the cost of legal action including the cost of a letter to their neighbour. And during the call with Amtrust, Mr A was offered a claim form for the very purpose of claiming on the policy if he wanted to. As Mr and Mrs A duly completed this, I think it was made clear to them that their request for assistance amounted to a claim.

Mr and Mrs A don't appear to be concerned about their claim for legal expenses insurance being declined by Amtrust but for the sake of completeness I will address whether this was declined correctly. That's because the declinature forms part of the service Amtrust provided them with. Looking at the report Mr and Mrs A commissioned in 2019 as well as their claim

form and taking into account that their cover with Amtrust started in 2023, I think it's fairly clear that Mr and Mrs A were aware of and indeed had already addressed the circumstances that would lead to a claim before cover was in place. Given the policy excludes cover in these circumstances, I take the view that their claim was declined fairly.

As I understand it Mr and Mrs A take exception to the damage to their property being described by Amtrust as 'significant'. They say it is not and want that reference removed from their records. As the investigator explained, it's not for this Service to determine what words an insurer should use. But having considered the claim Mr and Mrs A made, I'm not sure it was unreasonable for Amtrust to have described the damage in this way. In 2019 the report Mr and Mrs A commissioned said:

"Recent Works Undertaken

The paved area to the front of the garden has been lifted and re-laid and the finished level to the gravel areas has been lowered and new gravel laid; these works have been completed in the last twelve months.

The aforementioned works were undertaken due to root activity that had disrupted the paved area and caused damage to the inspection chamber located within it."

In their claim to Amtrust, Mr and Mrs A say:

"The renovation of our driveway in 2020 (due to root damage) revealed significant root growth going into our brick foundations. Photos showing this reveal the extent of the problem. My wife and I appeal to you to write to our neighbour who appears to be unaware of his legal responsibilities."

So, I'm not persuaded the words Amtrust used were unreasonable. And there's nothing to suggest they would have a negative impact on Mr and Mrs A in any way in any event.

Putting things right

Amtrust should pay Mr and Mrs A £100 in compensation for the confusion they caused in providing inconsistent information about whether a claim would be registered against their home insurance policy.

My final decision

For the reasons set out above I uphold Mr and Mrs A's complaint and direct Amtrust to comply with my award set out above.

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

Lale Hussein-Venn
Ombudsman