

## **The complaint**

Miss W is unhappy Amtrust Europe Limited (“Amtrust”) withdraw cover for a claim under a legal expenses insurance policy.

## **What happened**

Miss W was involved in a car accident, which she reported to her car insurer. As well as damage to her car, Miss W also suffered a personal injury and had other losses.

As part of her overall car insurance policy package, Miss W had a motor legal expenses insurance policy which was provided by Amtrust.

Amtrust use a panel solicitor firm to deal with any legal claims under the policy.

The car insurer passed Miss W’s details on to the panel solicitor.

The panel solicitor thought the legal case had a chance of winning (a requirement under the policy) so a claim was accepted under the insurance policy for help with legal costs and expenses related to the case. The panel solicitor started the process of taking legal action against the Third Party.

The Third Party made an offer to settle Miss W’s claim on a 50% liability basis, and it made an offer of financial compensation in full and final settlement of the legal claim. The panel solicitor’s advice to Miss W was that this was a reasonable offer that should be accepted. It was of the opinion it was unlikely to be beaten should the matter be heard in court.

Miss W did not accept that she was responsible for the accident that occurred so did not agree the matter should be settled on that basis. Due to the fact the panel solicitor thought the offer was reasonable, and the risks of incurring further costs if the case proceeded to a court hearing, Amtrust withdrew insurance cover. This meant that it would no longer pay for any legal costs Miss W incurred should she choose to continue with court action herself.

Miss W chose to continue with court action. Other offers were put forward by the Third Party to avoid the matter being heard in court. One included a full admittance of liability, a financial offer of compensation, and other costs being covered. It also however gave a warning that should the matter continue and be heard in court they would be asking that Miss W be required to pay their legal costs. Miss W declined these offers and had the matter heard in court.

The court found that Miss W was not liable for the accident, however it awarded an amount less than the Third Party had previously offered. The court required that Miss W pay the Third Party’s legal costs.

Miss W complained to Amtrust that it was wrong to withdraw cover on her claim. She said the panel solicitors had ignored the fact the Third Party’s car insurer had offered to deal with the repairs to her car and had described its insured as being the ‘fault’ party.

Because of this she thought the panel solicitor was wrong to suggest a 50% liability decision

was reasonable. Miss W believes that as that advice was wrong, Amtrust should not have withdrawn insurance cover and covered the costs of continuing with the court action.

She said the panel solicitor and Amtrust are responsible for the position she now finds herself in. And it's unfair that she has to pay costs and, not all of her losses have been covered, when she was never at fault for the accident that happened.

Miss W wants Amtrust to reinstate the insurance policy and deal with the legal costs she has been told to pay, as well as cover her other losses and expenses.

Amtrust considered Miss W's complaint at the time but didn't uphold it. It explained the policy allowed it to withdraw insurance cover if a reasonable offer to settle a legal claim is made. It was entitled to rely on the opinion of the panel solicitor about this and Miss W was warned of the risks of continuing with legal action.

Amtrust explained the panel solicitors are covered by their own complaints process and Miss W would need to contact it directly if she was unhappy about the advice it gave.

Miss W disagreed with Amtrust's answer and continued to contact it as the legal case progressed. And, after the court had made its decision. Miss W later brought the complaint to this service.

An investigator considered the complaint. She explained to Miss W she didn't think Amtrust had done anything wrong as it was entitled to withdraw insurance cover for the legal claim when it did.

The investigator incorrectly put forward an offer of compensation that Miss W's car insurer had offered for poor service in relation to how it had dealt with Miss W's queries about the legal expenses aspect of the policy.

Miss W didn't agree with the investigator's opinion on the case and asked for an ombudsman to review the complaint.

She explained again that she was not responsible for the accident and that she thought the advice the panel solicitor had given was wrong. She said the Third Party's car insurer had said they were the fault party and the panel solicitor ignored this.

She said she did not ask to make a legal claim through the court process, and she didn't think it was needed due to the position the car insurer had taken. It was the panel solicitor that started the court action, and it is responsible for the position she is now in.

Miss W said again that she wants Amtrust to cover the costs she has been ordered to pay by the court and make sure she is not out of pocket for an accident that was not her fault.

The case has been passed to me to decide.

### **My provisional findings**

I issued my provisional decision on 29 November 2024; I said that I didn't intend to uphold Miss W's complaint for the following reasons:

*"I want to assure Miss W I've considered and thought carefully about all of the points she has made. The purpose of my decision isn't to address every single point the parties have raised or to answer every question asked. My role is to consider the evidence presented by both parties to reach what I think is a fair and reasonable decision."*

*I understand there are many parties connected to what was a single car accident and this can be quite confusing.*

*I know Miss W is unhappy with her car insurer passing her details onto the panel solicitor and starting the legal and insurance claim processes. This is not something I will be considering here. It will be dealt with as a separate complaint.*

*In this decision I am considering the action of the legal expenses insurer, Amtrust. I will be considering if it acted reasonably in withdrawing cover when it did.*

*What does the policy say?*

*The policy wording sets out what cover will be provided under the policy and how things will be dealt with if a claim goes ahead. There are a lot of terms in the policy however the most relevant ones to this complaint are set out below:*

*“Significant and unusual exclusions or limitations...*

- We can choose someone to legally represent you, called an authorised representative. This person may negotiate and settle the claim on your behalf...”*

*“Section 1: Definitions...*

*Authorised representative - A solicitor, counsel, or claims handler appointed under the terms and conditions of Motor Legal Protection to represent your interests...*

*Prospects of success - Reasonable prospects greater than or equal to a 51% chance of success...”*

*“Section 3: What is not covered*

*This insurance does not cover:*

- 1. Any claim where we or the authorised representative deem there are no prospects of success...*
- 5. Claims, apart from uninsured loss recovery, where a reasonable estimate of the authorised representative’s legal costs is greater than the amount in dispute....”*

*“Section 4: Claims procedure and conditions of your policy...*

*2. We can:*

*a. Conduct in your name any claim or the defence of any claim at anytime.*

*b. Attempt to make a fair settlement before the authorised representative is instructed or legal proceedings issued. You will be consulted before any attempts are made to reach a settlement....*

*d. Appoint an authorised representative to negotiate and settle the claim on your behalf...”*

*What the above terms mean is that the panel solicitors were allowed to register court proceedings in Miss W’s name.*

*They were also allowed to negotiate with the Third Party and assess any offers made to*

*settle the legal claim.*

*They were also entitled to advise Amtrust that they no longer thought the claim had prospects of success - which in the circumstances of this case, meant they thought the likelihood of beating the financial offer the Third Party had put forward was lower than 51%. And, that the likely costs of going any further with the court action would be greater than the amount Miss W was claiming.*

*Was Amtrust right to withdraw insurance cover for legal expenses?*

*As the panel solicitors thought the offer made by the Third Party was reasonable and the monetary amount offered was unlikely to be beaten. This meant the prospects of success for the legal claim continuing, fell below the 51% level required for the insurance policy to keep providing cover.*

*I understand Miss W wanted to continue as she was unhappy with the liability aspect being put at 50%, however as a commercial business Amtrust is entitled to decide what legal action it will or will not provide funding for. Here, it was thought the financial offer of compensation was adequate and that the costs, and risks, of taking matters further were too high.*

*Amtrust are not legal experts. The normal approach of this service is that it is reasonable for an insurer to rely on the opinion of a suitably qualified expert, in this case, that would be the opinion of the panel solicitors.*

*Due to the conclusions of the panel solicitors and the terms of the policy, which I've set out above. I think Amtrust were correct to withdraw insurance cover and refuse to provide funding for any further legal action.*

*I know Miss W disagrees with solicitor's advice and its later request, as she continued with the court action, for her to include its costs in her legal claim against the Third Party. But I can't look at that. Solicitors are subject to their own complaints' procedures and do not fall under the remit of this service. I understand Miss W has complained to the correct organisation about her concerns.*

*I understand Miss W thinks the advice should have been different and the whole matter could have been avoided. Unfortunately, it isn't a straightforward process to pursue claims for personal injury or other costs which aren't covered by a car insurance policy. Especially where medical assessments or other reports are needed to show 'how much' someone should be awarded. And I think it is more likely than not, Miss W would have always needed assistance with this, even if the Third Party had admitted full liability in respect of the personal injury and other costs, right from the start.*

*Is Amtrust responsible for Miss W's current situation?*

*Miss W has my sympathy for the position she now finds herself in. However, I must consider if this is because of the actions of Amtrust. Having looked at everything I don't think it was.*

*Court action is thought of as a last resort - all attempts should be made to resolve matters first without needing to ask a court to decide a matter. And where a court thinks that a defendant has made reasonable attempts to resolve matters prior to a court hearing but these were refused, they can, as they did in this case, direct that the pursuer pay the defendant's legal costs. (As they could have mostly been avoided had the reasonable offer been accepted.).*

*I can see from the information available to me that Miss W was made aware of the risks of pursuing matters further. Which is what I would have expected. The fact that she chose to do so, for her own reasons, is not the responsibility of Amtrust.*

*Miss W will need to seek independent advice about the current situation she finds herself in and if anything can now be done in relation to the court's findings."*

### **Responses to my provisional decision**

Miss W did not agree with my provisional findings. She sent a large number of submissions; however, these most relate to what is happening now. She disagrees with the solicitors representing the Third Party about how the court costs should be settled and the wording of their proposed agreement. She also reiterated she did not make a claim on her car insurance policy, she didn't ask for any of this to happen and she was not at fault for the accident.

Amtrust did not make any further submissions.

### **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.

Miss W has my natural sympathies about the position she current finds herself in, and I've considered everything she has provided. However, it hasn't persuaded me to change the outcome I reached in my provision decision.

The fact that Miss W didn't make a claim though her car insurance policy doesn't influence my decision here. Insurer's will often make decisions to settle car repair claims for commercial reasons, however they may defend other claims, such as personal injury, as they can be more subjective and potentially more costly.

As I mentioned in my provisional decision, it isn't a straightforward process to pursue claims for personal injury or other costs which aren't covered by a car insurance policy. Especially where medical assessments or other reports are needed to show 'how much' someone should be awarded. I still think it is more likely than not, Miss W would have always needed assistance with this, even if the Third Party had admitted full liability in respect of the personal injury and other costs, right from the start.

Having reviewed everything, and for the same reasons as set out in my provisional decision, I don't think Amtrust has acted incorrectly here. It was entitled to rely on the legal advice it received and withdrew cover accordingly in line with the terms and conditions of the policy. The fact Miss W chose to continue with court action, for her own reasons, and incurred costs in doing so, is not the responsibility of Amtrust to now sort out.

### **My final decision**

My final decision is that I do not uphold Miss W's complaint against Amtrust Europe Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss W to accept or reject my decision before 16 January 2025.

Alison Gore  
**Ombudsman**