

The complaint

Mr W's complaint is about a claim made under the legal expenses section of a household insurance policy provided by Amtrust Europe Limited.

Amtrust Europe Limited is the underwriter of the policy, i.e. the insurer. Part of this complaint concerns the actions of the agents it uses to deal with claims on its behalf. As Amtrust Europe Limited has accepted it is accountable for the actions of the agent, in my decision, any reference to Amtrust Europe Limited includes the actions of the agents. Amtrust Europe Limited.

What happened

In July 2022, Mr W contacted Amtrust as he wanted cover to take legal proceedings against his neighbour. Mr W's neighbour had removed a boundary fence and extended a patio over the boundary line. Mr W says the neighbour also caused damage to his property by painting his brickwork and fixing items to his side wall.

Amtrust accepted that there was potential cover under the property protection section of the policy. Amtrust therefore sent the claim to one of its panel of pre-approved solicitors to assess whether there were reasonable prospects of success and that it would be proportionate to pursue, which are pre-requisites of cover under the policy.

In September 2022 the solicitors provided a written advice on the claim. They said that on the available evidence the legal claim was unlikely to succeed. The solicitors said that a surveyor's report would be required to determine the position of the boundary line and this would have to be at Mr W's cost. But, even if the line was where Mr W said it was, the solicitors said that the trespass would be considered to be minimal by the courts and so the claim would be disproportionate to pursue.

The solicitors said that if further evidence about the position of the boundary were provided, they would review the matter. The panel solicitors reviewed some further evidence provided by Mr W but in February 2023, stated their advice was still that there were not reasonable prospects of success, and the claim was disproportionate, so there was no cover under the policy.

In July 2024, Mr W brought his complaint to us. Mr W says the solicitors didn't consider the financial impact of the matter on him and the fact he has lost 8sqm of his land and the cost of the repairs he is facing to put things right. Mr W also says that the decision to reject his claim should never be based on the "*financial attractiveness ... [of the panel solicitors] to just win profitable cases*".

Amtrust stated that it was entitled to rely on the legal opinion already provided by its panel solicitors and that was that there was no cover under the policy. However, Amtrust said that if Mr W provided a favourable legal opinion, it would arrange for a barrister to consider the matter further and, if the barrister agreed there were reasonable prospects, it would be able to accept the claim.

One of our Investigators looked into the matter. She did not recommend the complaint be upheld as she thought Amtrust had fairly declined the claim.

Mr W does not accept the Investigator's assessment, as he says the legal opinion did not say he did not have a case but said it was not worth pursuing because it was a low value claim. However, Mr W says he thinks it is worth pursuing, as he has lost 8sqm of land and has issues with the neighbours every day.

As the Investigator has been unable to resolve the complaint, it has been passed to me.

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.

Mr W's policy provides for legal costs for various disputes that might arise, including property disputes as follows:

"to pursue a legal action for:

- *nuisance or trespass against the person or organisation infringing your legal rights in relation to your main home."*

There are "important conditions" of the cover including:

"Prospects of Success

There must be a 51% or greater chance of winning the case and achieving a positive outcome. A positive outcome includes, but is not limited to, recovering the amount of money at stake, enforcing a judgment or achieving an outcome which best serves your interests. The assessment of your claim and the prospects of its success will be carried out by an independent adviser. If the adviser determines that there is not a 51% or greater chance of success, then we may decline or discontinue support for your case.

Proportional Costs

An estimate of the costs to deal with your claim must not be more than the amount of money in dispute. The estimate of the costs will be provided with the assessment of your case and will be carried out by the independent adviser. If the estimate exceeds the amount in dispute, then we may decline or discontinue support for your case."

Almost all legal expenses insurance policies have similar terms and I do not regard these policy terms as unfair or unreasonable.

It is a principle of insurance law that it is for the claimant to establish, on the balance of probabilities, that they have a valid claim under a policy – so this would include establishing that it has reasonable prospects of success and that it is proportionate to pursue. However, it is usual in legal expenses policies for the insurer to appoint lawyers to assess the prospects of a legal claim at its own cost, rather than insist on policyholders doing so at the outset of a case.

Amtrust has done just that and arranged for one of its panel solicitors to advise.

We do not assess the merits of the legal claim, or the conduct of the legal case, that is not

within our expertise. Our remit is to assess complaints about regulated activities, such as carrying out an insurance contract. Therefore, in a case such as this, we can only assess whether the insurance claim has been dealt with fairly, reasonably and in line with the policy terms and conditions.

I have read the opinion of the solicitors and there is no evidence that would suggest it is so obviously flawed that Amtrust should not be entitled to rely on it.

The solicitors said that a surveyor's report would need to be obtained in order to establish where the boundary line is (and therefore if the neighbour has trespassed onto Mr W's property). Given it is for a claimant to establish their claim, I do not think it is unreasonable that this would need to be obtained by Mr W at his own cost. However, the solicitors also said that even if the boundary line is where Mr W says it is, the trespass was modest and the cost of pursuing it would be "*upward of £30,000*", so it would be disproportionate.

Mr W has said it is not right that a decision be made purely on the financial aspects of the case and I agree there may be some cases where the outcome sought is not a monetary award. While I appreciate the significance of the matter to Mr W, the solicitors have advised that the amount of land in issue would be considered modest and therefore the claim would be disproportionate to pursue, even if there were prospects of success (which on the available evidence they did not think there were). I therefore consider it reasonable for Amtrust to rely on the policy terms, regarding prospects of success and proportional costs, set out above to refuse cover for this part of the claim.

The solicitors also considered the claim for trespass and damage in relation to the neighbour painting and fixing items to Mr W's side wall. The solicitors said a claim for trespass would succeed in principle regarding this but the court would likely consider it so minor an issue (*de minimis*) that it shouldn't be brought before the court. The solicitors also said the alleged damaged of small drill holes to the wall could be filled at modest costs and there was no evidence that this, or the paint, will cause future damage to the bricks. The solicitors therefore said that Mr W was unlikely to succeed in obtaining a remedy from the court for these matters and they would also be disproportionate to pursue in any event, as even if a remedy were awarded, the costs of pursuing the matter would outweigh any benefit.

The solicitors also considered Mr W's claim that the neighbour had removed chicken wire attached to the neighbour's side of a picket fence. The solicitors said that it would not be possible to get an order forcing the neighbour to add chicken wire to their side of a fence, so this part of the claim would not succeed.

I am not persuaded that this is Amtrust or the solicitors declining the claim as it will not be profitable to them. The solicitors would be paid in any event, so they have no incentive to state a claim is disproportionate to pursue. They were tasked with providing independent professional advice based on their knowledge and expertise. While Mr W disagrees with that opinion, in the absence of any other legal opinion to counter what the panel solicitors have said, I consider that Amtrust is entitled to rely on this advice that the claims Mr W wants to make are not covered as there are no reasonable prospects of success and/or they are disproportionate to pursue.

Having considered everything, I am satisfied that Amtrust met its obligations under the policy. It arranged for the matter to be assessed and was entitled to rely on the opinion of the panel solicitors on the claim.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 5 February 2025.

Harriet McCarthy
Ombudsman