

## The complaint

Mr and Mrs B's complaint is about the rejection of a claim made under the legal expenses section of their home insurance policy with AmTrust Europe Limited.

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

## What happened

Mr and Mrs B contacted AmTrust in October 2024 to make a claim for representation in relation to proceedings brought against them regarding their son's attendance at school. AmTrust considered the claim but rejected it, as it said the policy does not cover the claim. AmTrust said there is cover for legal defence but only if the legal action has arisen from a formal investigation or disciplinary action by specific bodies, which it says is not the case here.

Mr and Mrs B are not happy with this and complained. AmTrust maintained its position that the claim is not covered so they referred the complaint to us.

One of our Investigators looked into the matter. He did not recommend the complaint be upheld, as he was satisfied that AmTrust was entitled to reject the claim for the reasons it had.

Mr and Mrs B do not accept the Investigator's assessment. They have made a number of points in support of their initial complaint and in response to the Investigator. I have considered everything they have said but have summarised their main points below:

- The policy includes legal defence cover for formal investigations, which this is. They have gone through an informal mediation process, which failed and have been summonsed to court, this is formal legal process.
- The relevant policy section lists certain exclusions, two of which are specific driving offences. This suggests that all other driving offences - which would involve a similar court process to the one they are involved in - are covered and that there is cover for legal defence for all other claims apart from the very limited set of exceptions listed.
- AmTrust has said it is impossible to list all the exclusions in a policy, which implies there are other defined exceptions which it is applying to their claim but which were not made clear in the policy documentation.
- AmTrust has relied on its own definition of what a "*formal investigation*" and "*regulatory body*" mean. Its interpretation is not what most reasonable people, or any legal organisation, would agree with.
- The Education Authority and/or the court should be considered to be a regulatory body.
- The Education Authority has the power to prosecute parents and as such it is the regulatory body responsible for regulating the parental duty to secure their children's

- attendance at school.
- The Youth Court has various powers in this instance and will take on a more investigatory role than in a 'normal' criminal prosecution. The court is also regulating their parental duty and has other regulatory powers and functions to secure a child's attendance at school.
- AmTrust used the maximum time to consider the matter and their complaint, which meant they were uncertain how to proceed and potentially the court case could have ended before significant cost were incurred.

As the Investigator has not been able 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 and Mrs B's policy with AmTrust provides cover for various legal disputes, including: employment, contract, property, personal injury, tax and legal defence. The parties are agreed that the policy term most relevant to this case is the legal defence section, which says AmTrust will cover:

*"Costs in a Legal Action to defend Your legal rights arising out of a formal investigation or disciplinary hearing brought against you by any trade association or professional or regulatory body.*

*What is not insured:-*

*Claims*

- a) For alleged road traffic offences where You did not hold or were disqualified from holding a licence to drive or are being prosecuted for driving whilst under the influence of alcohol or non prescribed drugs.*
- b) For Costs where You are entitled to a grant of legal aid from the body responsible for its administration, or where funding is available from another public body, a trade union, employer or any other insurance policy*
- c) For parking offences which cannot lead to penalty points on Your licence*
- d) Following an allegation of violence or dishonesty*
- e) For Standard Advisers' Costs incurred in excess of any costs You are able to recover".*

It is for Mr and Mrs B, as the claimants, to establish that they have a valid claim under the policy. If they are able to establish, on the balance of probabilities, that an insured event happened - so in this case that the claim is for costs of defending a legal action "*arising out of a formal investigation or disciplinary hearing brought against you by any trade association or professional or regulatory body*" - then AmTrust must meet the claim unless it can establish, again on the balance of probabilities, that there is an exclusion that applies.

An insurance policy does not need to list every possible claim that might be excluded, if there is nothing in the policy wording that would suggest it would be covered in the first place.

So the fact there is no specific exclusion to do with proceedings brought by an Education Authority, or in the Family or Youth court does not automatically mean they would be covered, or that AmTrust is relying on an undisclosed list of exclusions.

Instead, AmTrust is saying that this claim does not fall within the cover in the first place, as the legal action has not arisen out of a formal investigation or disciplinary hearing by a "*trade*

*association or professional or regulatory body*". I have therefore considered whether AmTrust has fairly interpreted the policy wording and applied it fairly to Mr and Mrs B's claim.

It appears to be agreed that the legal action has not arisen following an investigation or disciplinary hearing by a trade association or professional body. In my opinion, this would relate to policyholders that belong to such a body and are subject to a formal investigation in their capacity as members of such a body. As this appears to be agreed, I will not consider the reasonable interpretation of this part of the cover further. I will move on to consider whether the legal action in question here has arisen out of a formal investigation by a regulatory body.

The terms "*formal investigation*" and "*regulatory body*" have not been defined in the policy. I will therefore consider their ordinary meaning and how they should reasonably be interpreted in the context of the policy term set out above.

It seems to me that the term "*formal investigation*" suggests some government or official investigation, such as by a public body. And, in my opinion, the general understanding of "*regulatory body*" would be an official organisation that establishes the rules or standards for a particular industry sector or service area and which also has the power to ensure compliance with the standards set. I think people would think of organisations such as the Financial Conduct Authority, which regulates the financial service industry, when considering the nature and function of a regulatory body.

Court proceedings of any nature are formal, I don't think there can be any doubt about that. It is a formal legal process and the court has statutory powers. However, it seems to me that the court has not investigated Mr and Mrs B, rather it is being asked to consider the evidence provided as to whether they are in breach of legislation about school attendance.

I have considered what Mr and Mrs B have said about the more investigatory role that the Youth Court might take in cases such as this. I think the fact the court has a range of powers and orders available to it, does not render the process an investigation. It is a prosecution to be heard by the court, rather than '*investigated*' in the ordinary meaning of the word, by the court.

Even if I am wrong about that, I don't think the court is a regulatory body because it does not establish or oversee compliance of rules or standards in sectors of public life but rather has been asked in this case to determine, by way of a specific process, whether the Education Authority has established its case. I am also not persuaded that the fact the court might have the power to interpret and enforce decisions made by regulatory or professional bodies makes it a regulatory body itself. The courts can impose judgments on members of the public but I do not think most people would consider that they are regulated by the courts.

I have also considered whether the actions taken by the local education authority can be considered to be a formal investigation by a regulatory body. It seems likely to me that there would have been some form of investigation carried out by the Education Authority into Mr and Mrs B's son's lack of school attendance, and the reasons provided for it, to have got to the stage of taking legal action. I note they also refer to having been through a mediation process. So, while I make no finding as to whether this would amount to a "*formal investigation*" as required under the policy, I have gone on to consider whether it would be a regulatory body. Having done so, I do not think it is. I will explain why.

The relevant Education Authority website says it is a "*regional body with responsibility for the provision and delivery of education and youth services*". It is a public body but not all public bodies are regulatory bodies. The action is being brought by the Education Authority, which decided to ask the court to enforce legislation against Mr and Mrs B regarding school

attendance. Mr and Mrs B have said it therefore regulates their duties as parents, I am not persuaded by this.

While it has powers to bring a prosecution, I do not think this can reasonably be interpreted as meaning that the Education Authority regulates parents or their children, or that it is a regulatory body in the ordinary meaning of the term. As mentioned above, I think most people would reasonably consider that a regulatory body regulates its members, rather than the general public (or any specific group of the general public, such as parents). I do not think that most people would consider they are regulated by the Education Authority.

I note the argument Mr and Mrs B make about the specific exclusions around driving offenses and that this suggests that police investigation, or investigation by other government agencies, would be covered. However, it seems to me that such offences may be prosecuted following an investigation by a trade association or professional body. I do not therefore think these exclusions impact my consideration of whether the Education Authority is a regulatory body.

Having considered everything very carefully, and despite my natural sympathy for the difficult position they are in, I do not think AmTrust has acted unfairly or unreasonably in rejecting Mr and Mrs B's claim, as I do not think it falls within the cover provided. This is because, even if the legal action they are involved in has arisen from a formal investigation, it was not by a regulatory body.

Mr and Mrs B have also complained about the handling of the claim and the time taken to deal with the complaint. They said in the complaint form submitted to us that they consider this limited the decisions they could make in regard to the proceedings. I can see that AmTrust notified Mr and Mrs B that the claim was not covered a week after the claim was submitted. I do not think this was unreasonable. I have not seen any evidence to support that there was any impact on Mr and Mrs B's legal position due to anything AmTrust did wrong.

Mr and Mrs B complained about the rejection of the claim shortly afterwards and AmTrust issued its final response letter to the complaint at end November 2024. Complaint-handling in itself is not a regulated activity, so I cannot address this part of the complaint. However, I would point out that insurers have up to eight weeks to respond to a formal complaint. AmTrust did provide its response within this time.

### **My final decision**

I do not uphold this complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs B to accept or reject my decision before 22 July 2025.

Harriet McCarthy  
**Ombudsman**