

The complaint

Mr and Mrs G complain about the way AmTrust Specialty Limited has handled a claim under their legal expenses insurance policy.

Where I refer to AmTrust, this includes the actions of its agents and claims handlers for which it takes responsibility.

What happened

The detailed background to this complaint is well known to both parties, so I'll only summarise the key events here.

In 2019, Mr and Mrs G were issued notice of a loft conversion under the Party Wall Act by their neighbours.

In 2022, Mr and Mrs G noticed damp staining to their property in the area of the notifiable works. They informed their neighbours, but no action was taken. So they obtained a surveyor's opinion which confirmed the cause was faulty workmanship to the neighbour's loft. And repairs were quoted to be in the region of £4,500.

In 2023, Mr and Mrs G were issued with a Party Wall Award for the cost of the repairs. But their neighbours appealed it in the County Court. So Mr and Mrs G made a claim under their legal expenses insurance policy for the cost of defending the appeal.

AmTrust accepted the claim and instructed their panel firm of solicitors. The solicitors were of the opinion the claim enjoyed reasonable prospects of success, but they were concerned it would soon become disproportionate to pursue as the legal costs would outweigh the value of the claim. They provided AmTrust with three options on how to progress the claim:

1. AmTrust pays the full value of the claim, estimated to be in the region of £4,500, under the policy terms.
2. The solicitor makes the neighbour an offer to settle and the policy meets the shortfall.
3. The policy provides funding up to the value of the claim, but the legal advice was that *"this will not guarantee a settlement and won't be enough funding to trial"*.

In October 2023, AmTrust chose option three, and authorisation was given to the solicitors to proceed with the claim. The solicitors sought AmTrust's approval for costs at various junctures thereafter.

By January 2024, AmTrust had authorised costs amounting to £4,280. So when the solicitors sought further approval for Counsel's fees to attend the hearing, AmTrust said the claim was no longer proportionate to pursue and funding was withdrawn. This was two days before the hearing.

Mr and Mrs G asked AmTrust to approve the costs on the basis that it was likely they'd be recoverable from the other side. But AmTrust said no. So Mr and Mrs G had no choice but to engage Counsel privately. They attended the hearing, but this was postponed. In April 2024, the neighbour's appeal was dismissed, and they were ordered to pay the Party Wall Award plus legal costs. But these were less than what Mr and Mrs G had incurred, and they were out of pocket by £2,196 for their legal fees.

Mr and Mrs G raised a complaint, which they brought to our Service. In summary, they're unhappy with:

- The conduct of the panel firm of solicitors.
- Not being given freedom to choose their own solicitors.
- AmTrust's decision to choose option three above, rather than paying them the value of their claim.
- AmTrust's failure to manage the legal costs being incurred and communicating the amount of funding left available.

Our Investigator was satisfied that AmTrust had acted in line with the policy terms, and he didn't think it had treated Mr and Mrs G unfairly. But he did think it should make reasonable attempts to obtain the itemised billable hours from the solicitors so that Mr and Mrs G could see how the indemnity had been used.

Mr and Mrs G didn't agree, so the complaint was passed to me to decide. And I issued the following provisional decision.

My provisional decision

Panel solicitor's conduct

Our Investigator has explained that our Service can't look into the conduct of a firm of solicitors, who have their own regulators and complaints procedures. Mr and Mrs G accept this and have referred the matter to the Legal Ombudsman.

Freedom of choice

The terms and conditions of Mr and Mrs G's legal expenses insurance policy say that freedom to appoint a solicitor of their own choice arises when legal proceedings are necessary or if a conflict of interest arises.

Mr and Mrs G argue that as their neighbours had issued the appeal in the County Court, proceedings had been issued and they had freedom of choice. This is correct.

However, I've been provided with a copy of the claim form they submitted to AmTrust in 2023. This form asks Mr and Mrs G to provide the details of their chosen solicitors unless they're happy to use a panel firm. The answer provided says "*I want to use the recommended solicitors and submit a claim*".

As such, I'm satisfied AmTrust gave Mr and Mrs G the chance to provide the details of the solicitors they wanted to use. But they opted to use a panel solicitor rather than exercise their freedom of choice.

Paying the value of the claim

The terms and conditions of Mr and Mrs G's legal expenses insurance policy says:

"We are entitled to...decide not to commence or to terminate a legal claim at any time and pay you up to or equal to the amount that you are claiming for or the amount being claimed against you."

The panel solicitors advised AmTrust that whilst the claim had reasonable prospects of succeeding, it would likely become disproportionate to pursue. They gave AmTrust three options on how to proceed, which I've detailed above – one of which was to pay the claim in line with this policy term. AmTrust opted to pay £4,500 in legal fees rather than pay £4,500 to Mr and Mrs G directly.

It's a discretionary term of the policy for Amtrust to pay the value of the claim instead of the legal costs to pursue it, but we'd expect it to use this discretion fairly and reasonably.

I've asked AmTrust why it chose option three, given that it's outlay would've been the same for option one and option three; but that option one would've resolved the dispute for Mr and Mrs G as they could've dropped hands with the neighbour. And option three would leave them in a detrimental position – i.e. without policy cover prior to the hearing and exposed to legal costs.

AmTrust says that to pay the value of the claim would've created an expectation for future claims to be dealt with the same way. So, to treat customers fairly, it didn't want to create that expectation. I'm not persuaded by this answer, given that it only needed to inform Mr and Mrs G that just because one claim was settled in a particular way, it doesn't set a precedent for future claims. Treating customers fairly is ensuring it is doing the right thing at the right time, and I don't think putting a customer in a detrimental position is treating them fairly.

AmTrust says claims will often settle at a level less than the claim value and these claims rarely get to trial in any event. But I can't see any legal advice that this was the case here. Rather, the neighbours had opted to incur legal costs to appeal the Award rather than pay it, so it seems unlikely that they would later back down and pay it.

AmTrust also says that funding the claim up to its value goes beyond what a self-funding privately paying client would do. But I'm mindful that Mr and Mrs G weren't pursuing legal action, they were defending an appeal to a Party Wall Award. So they had no choice but to proceed with litigation unless they were willing to forgo the cost of repairs which I don't think a reasonable litigant in person would do.

In my view, AmTrust had the option to pay Mr and Mrs G the sum of £4,500 which would've allowed them to forgo recovery of the Party Wall Award from their neighbour and they could've paid for the repairs themselves with the policy settlement. Or AmTrust could've chosen option two, which may have reduced the amount they needed to pay towards the repairs had the neighbour accepted an offer.

Instead, AmTrust chose option three, forcing Mr and Mrs G down the legal route knowing that it would be leaving them without cover prior to the hearing. Furthermore, it withdrew funding two days before the hearing without agreeing any costs for the solicitor to try settling the matter on the best possible terms. As a direct result of this, Mr and Mrs had to incur almost £6,500 in legal costs to bring the matter to its conclusion. And they were only able to recover just under £4,300.

For this reason, I'm inclined to direct AmTrust to pay Mr and Mrs G their outstanding legal costs of £2,196.

Management of costs incurred and communication

As AmTrust had opted to fund legal costs up to the value of the claim, and given it knew the claim would become disproportionate prior to conclusion, I'd have expected it to be closely managing the legal costs being incurred to ensure Mr and Mrs G had the maximum benefit of cover.

Yet, I can see that each time the panel solicitors requested further funding, this was approved by AmTrust without any clarification of what the costs were needed for and whether they were being reasonably and necessarily incurred. The panel solicitors were asking for 10 hours' worth of funding at a time to "*deal with the claim*" and this was approved without question.

In my view, AmTrust has failed to manage costs. There is nothing within their file to show a breakdown of the work its panel firm undertook for Mr and Mrs G's legal claim which I'd expect it to have been aware of, especially at the point it was withdrawing cover. I fail to see the purpose of the solicitor seeking approval for their costs if AmTrust will simply approve them and not monitor what the costs are being incurred for.

Furthermore, AmTrust asked its panel firm to manage Mr and Mrs G's expectations regarding proportionality. But I can't see any response to this question on file, nor any follow up from AmTrust to ensure this was happening.

Mr and Mrs G were caused distress and inconvenience by having funding withdrawn two days before their hearing and I'm not satisfied their expectations had been managed that this could happen. I'm also not persuaded the costs incurred were reasonable and necessary given the lack of information about what work was being undertaken. For these reasons, I'm inclined to award compensation.

Responses to my provisional decision

AmTrust accepted my provisional decision. Mr and Mrs G didn't respond.

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.

As neither party had any further submissions for my consideration, I see no reason to deviate from the outcome explained in my provisional decision.

My final decision

For the reasons I've explained, I uphold this complaint and direct AmTrust Specialty Limited to pay Mr and Mrs G the following:

- the sum of £2,196 for the legal costs they're out of pocket for, plus 8% simple interest per annum from the date they paid Counsel until the date they're reimbursed.
- compensation of £200 for the distress and inconvenience caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs G and Mr G to

accept or reject my decision before 20 June 2025.

Sheryl Sibley
Ombudsman