

## **The complaint**

Mr C's complaint is about the rejection of a claim under his legal expense insurance cover with AmTrust Specialty 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 C submitted a claim to AmTrust, as he said a mortgage loan had been taken out in his name fraudulently by a family member. Mr C wants cover to take legal proceedings against the bank involved.

AmTrust accepted there may be cover under the identity fraud section of the policy, so it considered the claim. However, AmTrust subsequently refused the claim, as it said it only covers events that arise during the period of insurance. Mr C's policy started on 30 September 2021 (AmTrust had previously said it was 2022 but has since confirmed this was not correct) and AmTrust said Mr C had confirmed that he had first become aware of the fraud in December 2020.

Mr C was very unhappy with this and complained. He says he did not become aware of the fraud until after the start of the policy and he contacted the bank about it in late 2021. AmTrust did not change its position on the claim. As Mr C remains unhappy that his claim has not been covered, he referred his complaint to us.

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

Mr C does not accept the Investigator's assessment. He has made a number of points in support of his initial complaint and in response to the Investigator. I have considered everything he has said and have summarised his main points below:

- He is concerned about the independence of this process and that there is no review of the Investigator's assessment by an independent body.
- He logged the formal complaint with the bank in October 2021 and it did not respond until December 2021.
- In its final response to his complaint, the bank recorded an erroneous date (December 2020) as being the date of the fraud. This is the evidence that AmTrust relied on. This error was acknowledged by an Investigator that dealt with his complaint against the bank. The incorrect date recorded by the bank should not serve as grounds to invalidate his claim.
- He only became aware of the fraud after the policy started. But he must have inadvertently used that same incorrect date when referring to the bank letter when responding to AmTrust's questions.
- Mr C says the claim therefore falls within this cover and this was confirmed to him by

AmTrust's legal helpline. He wants me to review this call and says this ambiguity highlights the need for reconsideration of his claim.

- The fraud is ongoing and has serious implications for him.

As the Investigator was 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.

We are an informal dispute resolution service, providing consumers with an alternative to the courts if a dispute arises with a financial business. Our usual process is that an Investigator will look into the complaint and provide an initial assessment on what they consider the fair and reasonable outcome should be. If either party does not accept that initial assessment, they can ask for an Ombudsman to consider the matter afresh. My consideration of the complaint is independent of the Investigator and so I am free to reach a different conclusion on the matter, although in most cases the Ombudsman's decision will be along the same lines as the Investigator's assessment. For the avoidance of doubt, Mr C is free to disagree with my decision. If Mr C rejects my decision it is not binding on him and his legal rights against AmTrust, if any, remain intact.

I can see this has been a difficult time for Mr C, especially as this involves a family member, and it has serious implications for him. However, I am afraid that having considered the matter very carefully, I do not intend to uphold his complaint. I will explain why.

### Is the claim covered?

The policy covers various legal issues that may arise, including *"Personal Identity Fraud"*.

This section of the policy covers:

#### *"Costs arising from Identity Fraud:*

*a) To defend Your legal rights and/or take reasonable steps to remove County Court Judgments against You that have been obtained by an organisation from which You are alleged to have purchased, hired or leased goods or services. Cover is only available if You deny having entered into the contract and allege that You have been the victim of Identity Fraud;*

*b) To deal with all organisations that have been fraudulently applied to for credit, goods or services in Your name or which are seeking monies or have sought monies from You as a result of Identity Fraud..."*

Like all insurance there are various conditions that might also apply. The condition relevant to Mr C's claim states:

*"The insurance covers Advisers' Costs as detailed under the separate sections of cover, less any Excess, up to the Maximum Amount payable where: -*

- 1. The Insured Event takes place in the Period of Insurance."*

The policy defines 'insured event' as being:

*"The incident or the first of a series of incidents which may lead to a claim or claims*

*being made under the terms of this insurance.”*

Therefore, the claim for costs involved in relation to a personal identity fraud case will only be covered under the policy if the incident giving rise to the claim took place within the period of insurance, so in this case after 30 September 2021.

The fraudulent event complained of here is the mortgage application in Mr C's name, which is not disputed happened before 30 September 2021. The matter does therefore fall outside the dates for cover. However, we do require insurers to apply their terms fairly and so I have also thought about whether it might be fair to consider when Mr C became aware of the fraudulent act, rather than only rely on the date the fraud took place.

I have read Mr C's email to AmTrust in October 2023, which said: *“the initial suspicion about the fraud came about in approx. December 2020.”*

AmTrust therefore said this is evidence that Mr C was aware of the fraud in December 2020 before he took to the policy. AmTrust also points out that Mr C raised his complaint with the bank in October 2021, so he would have known about the fraud before October 2021 to make a formal complaint about it then.

Mr C says he mistakenly put December 2020, he thinks probably as a result of the bank mistakenly putting December 2020 (rather than December 2021) in its final response letter to him. Mr C says he had tried to lodge a second complaint with the bank about another relative having their signature forged on a document in December 2021, so this might be why the bank confused the dates.

I have thought carefully about the evidence provided and what Mr C has said about why he said he was initially suspicious about a fraud taking place in December 2020. I do not find his explanation particularly persuasive

The bank's final response letter to Mr C's complaint, says the fraudulent mortgage declaration was made in December 2020, it does not refer to Mr C's general suspicions. It is difficult to see therefore how Mr C might have been led to say his suspicions were raised in December 2020 in error due to this letter.

I also note that in the details Mr C submitted to us about his complaint to the bank he said his suspicions were raised when he was asked for paperwork for a new mortgage. It's not certain but from the bank's letter the mortgage was applied for in December 2020. This tallies with his email saying his *“initial suspicion about the fraud came about in approx. December 2020”*.

Even if I accepted Mr C did not know about the fraud in December 2020, I think it likely he knew about it before he took out the policy in September 2021. I say this because the note about his complaint to the bank says:

*“I suspected something was amiss with your Mortgage Advisor when ... [his relative] ... started requesting paperwork for a new mortgage. These were collated by them under false pretences and my post intercepted (bank statements). I reported missing statements to my own bank who thought it could be an issue with Royal Mail. When things were not making sense with what was occurring, I realised the deceit and tried to put a stop to things by reporting this to your bank. Initially trying to get your Mortgage Advisor to put things right. When this did not happen, I then tried to report this to Barclays Bank centrally as a formal complaint ... [on 26 October 2021] again to no avail.”*

This makes clear the suspicions had been going on for some time before Mr C complained to his bank on 26 October 2021. Mr C took out the policy on 30 September 2021. So there was a period of just over three weeks between the two events.

It is impossible for me to be certain on the evidence provided to me but it seems to me that the likely time period between Mr C realising the deception, communicating with the mortgage adviser to try and get them to put it right and making the formal complaint would have been more than three weeks. Taking all the evidence together, I think it is likely therefore that he was aware of the fraud before taking out the policy.

Mr C also says that the Investigator that looked into a related complaint against the bank accepted the date he was aware of the fraud was after September 2021. I have looked at this other complaint. I cannot see that any finding was made about the date Mr C was aware of the fraud. But in any case, I have to consider this complaint on its own merits.

#### Was cover confirmed by the legal helpline?

Mr C also says he spoke to the legal helpline provided with his policy and he was told his claim would fall within cover. He says this therefore creates ambiguity and highlights the need for reconsideration of his claim.

AmTrust says there was one call to the helpline and has provided a recording of that call. I have listened to the call and the adviser says there is potentially a claim for identity fraud and arranged to send Mr C a claim form. The call-handler made clear he could not confirm cover, as that was not the role of the helpline.

Mr C says there was also another call but there is no reliable evidence that another call took place. However, even if it did, and Mr C was told his claim would be covered, AmTrust would not be bound by that, if subsequently it was found that policy terms that mean the claim is not covered might apply.

I am not persuaded therefore that AmTrust needs to reconsider the claim. I am satisfied it was entitled to refuse the claim for the reasons it did.

#### **My final decision**

Despite my sympathy for Mr C's position, I do not uphold his complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 1 September 2025.

Harriet McCarthy

**Ombudsman**