

complaint

Mr S is unhappy with the way his claim for escape of oil was dealt with by Amtrust Europe Limited and that it has voided his policy for non-disclosure of proposed building works.

background

In November 2018 having just exchanged contracts on the purchase of his property Mr S applied for insurance through a price comparison website. He was referred to a broker and was asked questions about some proposed works to the property. He confirmed that he was planning on installing a new kitchen and bathrooms. He was asked if he was planning any structural changes and replied that he might change the tiles on the roof. But he confirmed he wasn't planning on having an extension or increasing the footprint of the building. He said the proposed work would cost about £150,000.

In December 2018, shortly after moving in, Mr S noticed a smell of oil and this was traced back to a leak in the oil tank on the property. He made a claim to Amtrust and had to pay out to clean up the oil and replace the tank. He also lost a large amount of oil. Amtrust arranged for a loss adjuster to visit in January 2019. The loss adjuster referred the matter back to Amtrust as he was concerned that the property was underinsured, whether a previous claim had been disclosed and whether Mr S had correctly represented the flood risk.

On further review, Amtrust discovered that Mr S had made an application for planning permission for works to the property the day after buying the policy. It said the works proposed were substantially different to what had been disclosed when setting up the policy. In particular it included structural work. Having reviewed the claim with its underwriters Amtrust said it wouldn't have issued a policy if the extent of the work had been disclosed to it. It said additionally that Mr P had significantly underinsured the property and hadn't disclosed previous flood damage he had been aware of. These latter two points wouldn't have affected the issuing of the policy although the underinsurance would have affected any pay-out and it's likely it wouldn't have provided flood cover. Amtrust voided the policy and declined to deal with the claim.

Mr S denied that he'd made any misrepresentation, pointing out that no works were under way at the time of the claim and the fact of applying for planning permission didn't mean that he intended to carry out the work detailed in the application.

On referral to this service our investigator said that he thought Amtrust had acted fairly. He was satisfied that in view of the fact that the plans had been submitted the day after setting up the policy and that Mr S disclosed that he had planned on spending in the region of £150,000 on the work indicated that he had planned on carrying it out.

Mr S objected pointing out that the planning permission hadn't been applied for when he took out the policy. He said the figure of £150,000 wasn't excessive, that the house was large and the figure could easily apply to the kitchen and four bathrooms. He also said the planning consent was misleading – he didn't intend to add a second floor. He further pointed out that Amtrust had taken two months to reach its decision whilst the property was contaminated by oil. He further said that we should take the Insurance Act 2015 into account.

The matter has been referred to me for further consideration.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I should make it clear that the Consumer Insurance (Disclosure and Representations) Act (CIDRA) applies to this case. Mr S has referred to the Insurance Act 2015 and the duty of fair presentation of the risk, but that duty (which is more onerous than that applied to consumers) applies to non-consumer insurance contracts. CIDRA impose a duty on the consumer to take reasonable care not to make a misrepresentation.

At the time of applying for the insurance Mr S would have been aware of his intention to apply for planning permission and had already had the plans and application drawn up. He didn't disclose to Amtrust what work the planning application envisaged. The initial question asked of Mr S was:

"Are there any major works or refurbishments planned?"

He replied "yes".

Then in the subsequent telephone conversation with the broker/agent he said the work proposed was *"new kitchen, new bathrooms"*. He was then asked:

"But no structural changes, it would just be re-fitting the insides?" He replied that he might change the tiles on the roof. He went on to say that he wasn't planning on adding another extension or to increase the footprint. He said the proposed work would cost £150,000.

The work envisaged by the planning application (which was granted) was, a bedroom and study swapped, utility room enlarged, stairs changed to wood, bathroom reconfiguration, gym area refigured, a new curved landing, a new shared terrace and general reconfigurations. The permission referred to the addition of a second floor. Whilst Mr S says there was to be no addition of a second floor, the plans clearly show the raising of the roof line to incorporate new rooms into the roof area. It appears that the property was bought with a view to refurbishing it.

I have to decide whether Mr S made a misrepresentation as to the extent of the works which he'd described to Amtrust as new kitchen and bathrooms and possible new tiles. I think the proposed work which he was aware of when speaking to the broker was quite different and was structural and that he misrepresented the extent of that work. I've considered his point that planning permission can be applied for without intending to carry out the work, but I think in all the circumstances of this case that it was most likely that the £150,000 budget was for the work in the planning consent. I take into account that he would have been aware at the time of the set-up call of the work outlined in the planning application.

So it was the fact that Mr S didn't disclose *structural* work that has caused Amtrust to void the policy and not deal with Mr S's claim. I've seen the exchanges between the claims and the underwriting teams and it's clear that the underwriters would have accepted refurbishment or refitting of the kitchen and bathroom but on learning the extent of the work set out in the planning consent said they wouldn't have issued a policy.

The statement of fact that was issued with the policy documents says, under the heading: *"Important Information, Information and changes we need to know about"*

Please tell your broker if there are any changes to the information set out in the application form/Statement of Fact or on your schedule. You must also tell your broker about the following changes:

any intended conversions, extensions or other structural work.”

The statement went on to say:

“When we are notified of a change, your broker will tell you if this affects your policy, for example whether we are able to accept the change and if so, whether the change will result in revised terms and/or premium being applied to your policy. “

So I think Mr S was aware of the need to advise Amtrust of the work he intended to have carried out to the property. And that if he had done so, the policy would have been referred to the underwriters who would have told Mr S a policy wouldn't be issued.

Mr S's misrepresentation was careless and not reckless or deliberate. In those circumstances the insurer is entitled to void the policy and return the premium which is what happened here. I think Amtrust acted fairly.

As regards Mr S's complaint about the delay, he sent the claim form back on 14 December. Then the loss adjuster's visit was in early January. He referred the matter back to the underwriters on other grounds. It was only when it investigated the matter further and found the planning consent which it hadn't been told about, that Amtrust had to consider the matter further. It advised Mr S of its decision on 5 February. I understand Mr S's anxiety about the matter but note that he was able to have the necessary repairs carried out. But a decision to void a policy requires careful consideration. I don't think there was an unreasonable delay in Amtrust advising Mr S of its decision.

Whilst I appreciate the difficulty voiding the policy has caused Mr S, I think that Amtrust acted reasonably in accordance with the policy terms and taking CIDRA into account.

my final decision

I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 11 June 2020.

Ray Lawley
ombudsman