

complaint

Mr A complains that Amtrust Europe Limited declined his gadget insurance policy claim. My references to Amtrust include its agents.

background

Mr A's camera and camera lens were damaged when he was involved in an attempted rescue. He claimed on his gadget insurance policy, insured by Amtrust.

Amtrust declined the claim. It said the items Mr A claimed for didn't meet the gadget criteria under the policy - the gadget had to be purchased new or refurbished from a UK VAT registered (or the equivalent tax if purchased overseas) company and supplied with a proof of purchase. Amtrust said it had received a document from the company that sold the items to Mr A that purported to show VAT paid but it said the company wasn't a UK registered company and not VAT registered. Amtrust said it wasn't able to verify the company as being registered in the Hong Kong as there was no company registration details supplied.

Amtrust also said the policy required the proof of purchase to have a serial number for the items claimed, and there was none on Mr A's proof of purchase. Amtrust refunded all the policy premiums to Mr A as it said the camera and lens would never have been covered by the policy as they didn't meet the gadget criteria.

Mr A complained to us. He said: the policy requirements Amtrust relied on weren't clear when he bought the policy; he'd bought on-line from a business lots of people use; he wasn't aware of any on-line retailers who gave a proof of purchase letter including the serial number; he'd bought alternative insurance that didn't have the same onerous wording.

During our investigation Amtrust sent the wording Mr A would have seen during the on-line sale of the policy. It said Mr A had to tick a box to confirm he'd read and accepted the policy terms before he bought the policy. It also said even if it hadn't declined the claim for not meeting the gadget criteria it would have declined under another policy exclusion.

Our investigator thought Amtrust unfairly declined the claim. He said it should pay the cost of the repairs to the camera, subject to Mr A providing a suitable receipt, less the policy premium amount it had already refunded to him.

Amtrust disagreed and wanted an ombudsman's decision.

my provisional decision

I made a provisional decision explaining why I was intending to uphold this complaint but with a different outcome than suggested by our investigator. I said:

'The policy says:

'Criteria: We can only insure gadget(s) that are:

1. purchased new or refurbished from a UK VAT registered (or the equivalent tax if purchased overseas) company and supplied with a proof of purchase'.

That's an unusual, significant and onerous policy requirement and to be able to reasonably rely on it Amtrust must highlight the requirement to a consumer at the point of sale.

When Mr A bought the policy he was given the following information on-line:

'Key terms and conditions

To be entitled to cover under this insurance you confirm the following to be true...

You have proof of purchase for each gadget (original purchase receipt or phone contract showing IMEI No)'.

So the key facts say to be entitled to cover Mr A must have proof of purchase (which he had). There's no mention of the unusual, significant and onerous criteria about the gadget having to be bought from a UK VAT registered (or the equivalent tax if purchased overseas) company.

Amtrust says that later in the sales process there's a link to its insurance product information document (IPID). That document says if Mr A makes a claim he needs to include:

'Proof of Purchase - the purchase receipt provided at the point of sale that gives details of the gadget(s) purchased (including any accessories), or similar documents that provide proof that you own the gadget(s) and enables the age of the gadget(s) to be reasonably identified. The receipt should include confirmation of the IMEI or serial number of the gadget(s) (where possible) and detail the UK VAT registration number of the company (or the equivalent tax if purchased overseas)...

I accept the IPID gives more information, but it still isn't sufficiently clear that it's a fundamental criteria for cover that the gadget had to be bought from a UK VAT registered (or the equivalent tax if purchased overseas) company.

As part of the policy sale process Mr A did have to tick to confirm he'd read the policy documents. The policy document does detail the relevant criteria, but only at page 8 of a 20 page document.

I'm satisfied Amtrust hasn't sufficiently highlighted the unusual, significant and onerous gadget criteria it's relied on to decline the claim. I think the lack of clarity disadvantaged Mr A. If the criteria had been clearly highlighted I think it's more likely than not that Mr A wouldn't have bought the policy. He would have bought an alternative policy without the criteria, as he now has.

Amtrust didn't fairly rely on the gadget criteria to decline Mr A's claim.

Amtrust says if it hadn't relied on the gadget criteria it would have declined the claim on the following policy exclusion:

'Where you knowingly leave your gadget somewhere where you can't see it but others can and it is at risk of being damaged'.

Mr A told Amtrust in his claim form that he ran up the footpath to get a phone signal and while on the phone to the rescue service a gust of wind blew his tripod/camera over, damaging the lens and camera. From the claim form information there's no evidence Mr A left the camera where he couldn't see it. He's told us his camera was in his sight at all times and he saw it fall, but he needed to walk away from the camera to get a phone signal.

I accept what Mr A has said. Amtrust couldn't reasonably rely on that exclusion to decline his claim.

The fair and reasonable outcome is for Amtrust to accept the claim. Our investigator said Amtrust had to pay for the repair subject to Mr A providing a suitable receipt, less the premium amount it had already refunded to him. I think there should be a different outcome.

The policy says for accidental damage Amtrust '*will repair or replace your gadget if it is damaged as the result of accidental damage, providing the gadget is returned to us*'.

Mr A's already told Amtrust that he had to buy a replacement lens and sent the broken one to the manufacturer. I think it would be reasonable for Amtrust to pay the replacement cost.

I've seen the receipt Mr A sent with his claim. It details the items he bought, the date and cost. It doesn't give the serial numbers for the items, which Amtrust said it requires under the policy. But the policy actually says the receipt should include confirmation of the '*serial number of the gadget(s) (where possible)*'. So I don't think Amtrust can reasonably say the lack of serial number means Mr A's receipt isn't sufficient proof of purchase. I think he has already provided a suitable receipt.

I don't think it's fair for Amtrust to deduct the whole amount of the premium it refunded from any claim payment. I understand Mr A paid the policy as a one off payment. Amtrust can deduct the refund of the premium from the start of the policy to the date the policy was cancelled. In that way Mr A pays the premium for the time he was covered by the policy.

After cancellation Mr A bought other insurance to cover his camera. So it's not fair for the refund to be deducted for that period of time as in effect that would mean Mr A would pay the cost of the two policies'.

responses to my provisional decision

Amtrust accepted, and Mr A had no comment on, my provisional decision.

my findings

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

As Amtrust accepted, and Mr A had no comment on, my provisional decision I have no reason to change my mind.

For the reasons I've given in my provisional findings and these findings I uphold the complaint. Amtrust must accept Mr A's claim. From any claim payment Amtrust makes it can deduct the amount of the policy premium it refunded to Mr A from the start of the policy to the cancellation of the policy, as it's now agreed. If any claim payment is made Amtrust must add interest as I've detailed below.

my final decision

I uphold this complaint.

I require Amtrust Europe Limited to accept Mr A's claim. From any claim payment Amtrust Europe Limited makes it can deduct the amount of the policy premium it refunded to Mr A from the start of the policy to the cancellation of the policy, as it's now agreed.

If any claim payment is made Amtrust Europe Limited must add interest* at 8% simple a year from the date of claim to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 24 February 2020.

Nicola Sisk

ombudsman

*If Amtrust Europe Limited considers that it's required by HM Revenue & Customs to take off income tax from that interest it should tell Mr A how much it's taken off. It should also give Mr A a certificate showing this if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.