

complaint

The circumstances and background to this complaint were set out in my provisional decision in August 2013, as follows:

Mrs M complains about the handling of her claim for uninsured losses under the legal protection cover of her motor insurance policy. Her legal expenses cover was underwritten by Amtrust Europe Limited ('Amtrust'). References to Amtrust include its claims handlers.

background

Mrs M's vehicle was damaged in a road traffic accident for which she blamed the third party. She had third party fire and theft cover with her motor insurer—a different business to Amtrust—and wished to recover her uninsured losses.

There was an initial delay on Amtrust's part in establishing the correct identity of the third party's insurer as Mrs M had provided an incorrect registration number for the third party vehicle. It seems that correspondence was addressed to the wrong insurer who arranged for inspection of Mrs M's vehicle on a without prejudice basis. This insurer sent Amtrust a repair estimate of about £1,380 (including VAT) and apparently proposed that the matter should be settled on a cash-in-lieu basis—subject to liability—for the sum shown in the estimate. Amtrust sought confirmation from Mrs M as to whether this proposal was acceptable.

Mrs M confirmed to Amtrust that she would accept the £1380 figure plus her travel expenses of about £370 which Amtrust had claimed on her behalf. She appears to have understood that a firm offer had been made and asked Amtrust to chase up the third party insurer to send her the cheque. She said she had disposed of the car and bought another vehicle.

Amtrust informed Mrs M that it had confirmed acceptance of the proposed settlement and would keep her updated. The sequence of events is not totally clear but it seems that Amtrust became aware of the correct identity of the third party insurer and that this insurer had been in communication with Mrs M's motor insurer. I gather the third party insurer had offered settlement on the basis of a 50/50 liability split.

When the matter remained unresolved several months after the accident, Mrs M complained to Amtrust about the delay and how the claim had been handled. Amtrust apologised about the confusion over the third party insurer but said it had passed the file to a senior member of staff to monitor the matter and chase the third party insurer for her.

Dissatisfied, Mrs M referred her complaint to this service. Our adjudicator found there had been a series of errors in the handling of the claim; while Mrs M had initially given the incorrect registration number, this mistake had been compounded by Amtrust's failure to take due account of her description of the model and colour of the third party vehicle. He also considered that Mrs M had been led to believe that she had been offered the amount of her claim. In his view Amtrust should make a compensatory payment to Mrs M for the full amount of her claim.

Amtrust acknowledged that there had been delays in the progress of the claim but stated that it was liaising with the third party insurer and still investigating liability. It said it would not simply pay the shortfall if the third party insurer refused to increase its offer of 50/50.

The matter has progressed since our adjudicator's assessment. Amtrust has sent Mrs M a cheque from the third party insurer for about £580 which it said she could cash as partial settlement of her claim. It said the payment represented 50% of the repair costs less VAT and asked her to forward the repair invoice showing the VAT element so that it could seek recovery of 50% of the VAT. Mrs M accepted the cheque as part payment of her claim and confirmed, as she had previously informed Amtrust, that she had scrapped her vehicle.

Further to these developments, another adjudicator reviewed the matter and did not believe it reasonable to hold Amtrust liable for the amount of the claim. She recommended a compensation payment of £250 for distress and inconvenience.

Amtrust responded that it had not been involved in the negotiations with the third party insurer concerning the damage to Mrs M's vehicle but that these had been conducted by Mrs M's motor insurer. It accepted that the letter sent to Mrs M with the third party insurer's cheque was inaccurate as Mrs M had already told them she had disposed of her car. It also agreed it could have been more proactive in the handling of the claim and offered £100 compensation for distress and inconvenience.

This offer was unacceptable to Mrs M who felt she should be entitled to at least £2,000 because of the loss of her car and she had had to borrow money to buy another. She has also recently informed us that she had received what she regards as a derisory offer for her travel expenses.

my provisional findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

It is unfortunate that the registration number given by Mrs M for the third party vehicle was incorrect. Nevertheless, it appears that there were delays by Amtrust in progressing the claim against the correct insurer. Furthermore, the correspondence sent to Mrs M has not always been in clear terms and there seems to have been a degree of confusion throughout. The claim generally has not been well handled and in my judgment this is a case where compensation for distress and inconvenience is warranted. I consider £250 an appropriate sum.

It is not within my remit to assess the merits of Mrs M's underlying legal claim but it is evident that Mrs M is very dissatisfied with the 50/50 settlement which I understand has now been reached between her motor insurer and the third party insurer in respect of her vehicle. I note that Amtrust informed Mrs M that it believed a 50/50 liability split appropriate—given the lack of independent witness evidence—but Amtrust has informed us that it did not take part in the negotiations. It says these were dealt with by Mrs M's motor insurer. On the basis that it was Mrs M's motor insurer who settled the claim for Mrs M's vehicle, it is therefore for her to take up any issue she has about the settlement directly with that insurer.

I understand that Mrs M's claim for travel expenses following the accident is ongoing and that Amtrust is handling this aspect of her claim. She has informed us and Amtrust that she is unhappy with the recent offer made but it is not for me to determine whether or not it is reasonable. It is for her to liaise with Amtrust regarding its adequacy and for Amtrust to deal with that element of her claim in accordance with the policy terms. As typically the case in legal expenses insurance, cover is conditional upon the case having reasonable prospects of success. Mrs M's policy provides:

Cover will only be provided if we and, where applicable, the appointed legal representative, are of the opinion that there are reasonable prospects of recovery from the third party...

The policy further provides:

The insured person should advise us directly or through their appointed representative immediately of all offers to settle or payment into court in respect of the claim. No offer of settlement or negotiation can be made without our agreement...If the insured person does not accept the offer or payment into court and we consider that the outcome of the case will not be bettered we reserve the right to withdraw cover and will not be responsible for any further legal costs and expenses after the offer or payment into court was made.

I am not aware that Amtrust has sought any legal advice as to whether the third party's offer for travel expenses is reasonable and I would consider it fair for Amtrust to now obtain a legal opinion as to the adequacy of the offer. If the advice should be that the current offer is not reasonable, I would consider it appropriate for Amtrust to fund the pursuit of the claim. It would of course be open to Amtrust to simply pay Mrs M the amount of the shortfall between the sum so far recovered for travel expenses and the amount of her claim—subject to the 50/50 split of liability which has apparently been reached between her motor insurer and the third party – if this is not further disputed.

my provisional decision

I am minded to uphold this complaint to the extent that Amtrust Europe should pay Mrs M compensation of £250 for distress and inconvenience. With regard to Mrs M's claim for travel expenses, I direct that Amtrust Europe should obtain an opinion from a qualified lawyer as to the reasonableness of the offer made by the third party insurer. If the opinion is that the offer is unreasonable, Amtrust Europe should continue to fund the claim in accordance with the policy terms.

developments

Mrs M has expressed disappointment with my decision. She says that on the day of the accident she notified her motor insurer, gave the colour of the other vehicle and said she was not sure about the correctness of the registration number written down by the driver.

She says the motor insurer's representative checked and told her he had found a car matching her description which was insured; she was, however, subsequently led to believe that she was dealing with an uninsured driver. It was only when she spoke to our adjudicator that it became apparent she was not dealing with an uninsured driver.

I have carefully considered Mrs M's comments but they do not persuade me to depart from my findings set out in my provisional decision and my proposed award for distress and inconvenience. I noted in my provisional decision that there seemed to have been a degree of confusion throughout this matter and that the claim generally had not been well handled—regardless of the initial information provided about the registration number.

Amtrust has made no submissions in respect of my proposed award for distress and compensation but has obtained a legal opinion on the third party's offer for Mrs M's travel expenses claim. Amtrust should now provide Mrs M with a copy of this opinion and communicate directly with her regarding her travel expenses claim in light of the opinion and in accordance with the policy terms.

my final decision

I uphold this complaint to the extent that Amtrust Europe Limited should pay Mrs M compensation of £250 for distress and inconvenience.

Christopher Tilson
ombudsman