

The complaint

Miss J and Mr R are unhappy with what Amtrust Europe Limited did after they made a claim on their landlord's legal expenses and rent guarantee insurance.

What happened

On 9 December 2022 Mr R contacted Amtrust and said a Section 21 eviction notice had been served on his tenant. That had expired on 30 November but she was refusing to leave. He wanted assistance from the policy to pursue eviction proceedings. Amtrust referred the matter to panel solicitors who advised the notice was undated and there was a real possibility the claim would fail on that basis. They said Mr R should issue a new notice.

Amtrust said its policy covered legal action to recover possession of a property where a tenant didn't perform obligations set out in the tenancy agreement. But in this case, as the notice was invalid, the tenant wasn't in breach of their obligations. And Miss J and Mr R's policy with it expired on 2 December 2022 and they'd renewed with a different provider. So any breach of a new notice would fall outside of its period of cover. In addition, it was a requirement of the policy a claim must have reasonable prospects of success. Based on the advice from the panel solicitors it didn't think that was the case here.

Our investigator accepted the Section 21 notice was invalid. But, as defined in the policy, an insured event was the first in a series of incidents that might lead to a claim. In this case she thought that was the issuing of the notice as that's when Miss J and Mr R had started repossession proceedings. She also noted the tenant had fallen behind on rent payments from September 2022 which was also within Amtrust's policy period. So she thought it should reconsider the claim in line with the remaining policy terms.

Amtrust didn't agree. It said the tenant wasn't in breach of any obligation until the expiry of a valid Section 21 notice. An insured event wouldn't have taken place until then and that hadn't happened during its period of cover. And the claim was made on the basis the tenant hadn't left at expiry of the notice period and not on the basis of any rent arrears.

I issued a provisional decision on the complaint last month. In summary I said:

The relevant rules and industry guidelines say Amtrust has a responsibility to handle claims promptly and fairly. It shouldn't reject a claim unreasonably.

I've looked first at the terms and conditions of Miss J and Mr R's policy. Under 'Tenant Eviction and Pursuit of Rent Arrears' the policy says it provides cover for advisers costs to pursue "Legal Action against a Tenant or Guarantor to recover possession of the Insured Property where the Tenant fails to perform his obligations set out in the Tenancy Agreement relating to the rightful occupation of the Insured Property". It also covers costs to pursue "A Tenant or Guarantor for Rent arrears owed on a tenancy relating to the Insured Property once possession has been gained."

However, the policy says that's provided "the "Insured Event takes place in the Period of Insurance" And it defines 'Insured Event' as "the incident or the start of a transaction or

series of incidents which may lead to a claim or claims being made under the terms of this insurance.”

The policy also says for cover to be provided there “must be more than a 50% chance of winning the case and achieving a positive outcome. A positive outcome includes, but is not limited to, recovering the amount of money at stake, enforcing a judgment or achieving an outcome which best serves Your interests. The assessment of Your claim and the prospects of its success will be carried out by an independent Adviser. If the Adviser determines that there is not more than a 50% chance of success then We may decline or discontinue support for Your case”.

In this case Miss J and Mr R issued a Section 21 notice in September 2022. I don't think the issuing of that notice would constitute an 'Insured Event' as defined in the policy. Section 21 notices are issued without there having to be any fault on the part of the tenant. And Miss J and Mr R don't appear to have known the tenant wouldn't leave when the notice expired.

I think it's reasonable to say the Insured Event in this case occurred following the expiry of that notice when the tenant made clear they weren't going to leave the property. That would be in line with the definition of 'Insured Event' the policy contains because, regardless of the fact the notice appears to have been invalid, Miss J and Mr R would have known then they might need to make a claim on their insurance.

I asked Miss J and Mr R to confirm when the tenant told them they wouldn't be leaving the property. However, while they said the tenant in fact left at the start of April 2023 they didn't provide information on what happened in December 2022. But given the claim was reported to Amtrust on 9 December 2022 I think it's most likely it was on or shortly before that date the tenant confirmed they wouldn't be leaving. And their cover with Amtrust expired on 2 December 2022. So I think Amtrust was right to conclude an insured event hadn't take place during its period of cover.

Even if the tenant did tell Miss J and Mr R prior to 2 December 2022 she wouldn't be leaving the property the advice from the panel firm was the Section 21 notice was invalid as it was undated. And a further notice would need to be issued. I appreciate that advice was from a paralegal and I'm not clear whether she was supervised by a qualified lawyer as we'd expect. Nor does her advice explicitly say the claim wouldn't have reasonable prospects of success as a result. So I'm not clear Amtrust was entitled to turn down the claim on the basis the policy requirements in relation to that hadn't been met.

But the policy doesn't cover costs arising from “your failure to take any action recommended by Us or the Adviser to recover possession of the Insured Property as promptly as possible”. Given there was clear advice from the panel solicitor that a new notice needed to be issued I think Amtrust was in any case entitled to decline funding for the claim until that new notice had expired.

It's not clear Miss J and Mr R did then incur any costs. I asked them whether that was the case but they didn't provide any information on this. And while I understand the tenant left with rent unpaid that's a different claim to the one Miss J and Mr R contacted Amtrust about in December 2022. If they believe those issues form part of an insured event which arose during their period of insurance with Amtrust they'd need to raise a new claim in relation to them.

Alternatively, if they think that should be the responsibility of the insurer that took over from the start of December 2022, they could make a claim to it if they haven't already done so. But for the reasons I've explained I don't think there's further action Amtrust needs to take on their existing claim.

Responses to my provisional decision

Neither side responded to my provisional decision.

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 I haven't received any responses to my provisional decision, I don't have any reason to alter the conclusions I set out in it.

My final decision

I've decided not to uphold this complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Miss J and Mr R to accept or reject my decision before 6 December 2023.

James Park
Ombudsman