

The complaint

Mr W complains Amtrust Europe Limited misadvised him about the cover available under his legal expenses insurance policy in relation to a dispute with his neighbour and declined his claim.

Where I refer to Amtrust, I include their claims handlers and agents.

What happened

Mr W had legal expenses insurance (LEI) with Amtrust Europe Limited as part of his home insurance policy. He made a claim for his costs of defending an application for adverse possession his neighbours were making against him.

Amtrust said initially the policy didn't cover Mr W's claim. But they said they could consider providing cover if the matter was referred to the First Tier Tribunal (FTT). Mr W disagreed with Amtrust's assessment. Following exchanges of correspondence, he understood Amtrust had confirmed it would provide cover once his dispute with the neighbours had reached the FTT. Mr W went back to Amtrust once the dispute had reached that stage. But they told him then there was no cover under the policy at all since his dispute with the neighbours fell outside its terms.

Mr W didn't agree. He felt his case involved a trespass, since the neighbour was claiming ownership of his land, and that it fell within the policy terms on that basis. He said Amtrust couldn't change their minds about covering the claim since they'd confirmed they would. And he said that if he'd known his claim wouldn't be covered, he would have tried to settle the dispute with his neighbour to avoid incurring costs later on.

Amtrust considered Mr W's complaint. In summary they said:

- They hadn't confirmed they would provide cover, only that they'd consider a claim if he brought it back to them once the dispute had reached FTT stage.
- They noted Mr W's point that their helpline had confirmed his claim was covered. But they explained the helpline only offered general advice, based on information given to them verbally without access to policy wording, and didn't make decisions about cover.
- They'd mis-advised Mr W that there was a section of the policy that applied to the claim, and they offered Mr W £100 to settle the complaint because of that.
- Since Mr W was defending an application for adverse possession it didn't amount to pursuing a claim for nuisance or trespass. So, they weren't able to provide assistance.
- They acknowledged Mr W disagreed with their interpretation of the policy and they offered to consider any further evidence he submitted.

Mr W didn't accept Amtrust's response to his complaint and brought it to the Financial Ombudsman Service. While Mr W was waiting for us to consider his complaint, Amtrust obtained legal advice. The solicitors advised, broadly, there was no evidence of trespass based on the available information. Amtrust continued to decline the claim based on the

solicitors' advice. They said they'd consider any further information or documentation Mr W might want to provide and ask their solicitors to consider if it changed their view. They also said he could get a legal assessment from his own solicitors, on certain conditions and at his own expense, setting out why the claim would be covered and the prospects of success. They said if that opinion was supportive, they would then obtain Counsel's opinion and, if that was supportive, they would cover the claim.

Our investigator didn't think Mr W had cover under the policy for defending an adverse possession claim or that Amtrust had declined the claim unfairly. And she thought it was fair for them to rely on the solicitors' advice to continue to decline the claim. Our investigator acknowledged what Amtrust had said about covering the claim could have been clearer. But she thought the appropriate remedy for that was compensation, and that the £100 compensation Amtrust had offered was fair.

Since Mr W didn't agree, his complaint's been passed to me to decide.

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.

In line with Financial Conduct Authority rules we expect insurers to consider claims promptly and fairly and not to decline claims unreasonably. I've considered Mr W's complaint against that background. The starting point is the terms and conditions of the policy.

I've taken account of the detailed points the parties have both made. I may not mention everything they've told us here. No discourtesy is intended by that. It simply reflects the informal nature of the service we provide. I'll focus on what I consider key in coming to my decision. As I'll explain, I've come to the same outcome as our investigator for similar reasons.

Mr W had cover under his LEI policy for costs of up to £150,000 for claims accepted under the "**Property Infringement**" section, subject to all the terms, conditions and exclusions set out in the policy.

The "**Property Infringement**" section of the policy covered:

*"**Advisers' Costs** to pursue actions for nuisance or trespass against the person or organisation infringing **Your** legal rights in relation to **Your** main home. This section does not extend to divorce or matrimonial matters. The nuisance or trespass must have started at least 180 days after **You** first purchased this insurance or purchased similar insurance which expired immediately before this insurance began".*

Cover was limited to where Mr W was taking action against someone, and then only where that action involved a claim for trespass or nuisance. Mr W was initially seeking cover for the costs of negotiations that were part of the Land Registry's process in relation to the adverse possession proceedings that the neighbour was making against him. Even though he said the next step would be an appearance at the FTT, Mr W would have been defending the neighbour's adverse possession action there. So, it wasn't unreasonable for Amtrust to decline the claim based on the cover the policy provided.

I've considered whether the exchanges that took place between Amtrust and Mr W after the claim had been declined mean it's fair to ask Amtrust to meet the claim even though it wasn't covered. I'm not persuaded they do. I'll explain why.

Mr W says the legal helpline told him his claim was covered. Legal helplines offered by LEI insurers commonly provide first stage legal advice based on information the caller provides. Amtrust's said that's how their helpline works and that the helpline wouldn't have had access to the policy wording.

The policy set out under the heading "Legal Helpline" that it provided *telephone* advice on any private legal problem. That reflects the limited nature of the service the helpline gave. The policy set out separately the process for resolving complaints between Mr W and Amtrust. And cover was excluded under the policy for disputes between Mr W and Amtrust.

I think Amtrust suggested Mr W contact the helpline in the context of requiring advice about the dispute with his neighbour rather than about policy cover. And, although the policy required Mr W to contact the legal helpline initially to make a claim, it ought to have been clear from the contact he then had with Amtrust, that decisions about policy coverage and claims were made by the claims team.

Bearing all these points in mind, I don't think it was reasonable for Mr W to think the helpline could provide a view on policy cover on which he could rely.

Amtrust acknowledged they'd given Mr W the impression, wrongly, in July 2022 that, based on the information he'd given them, there was a section in the policy that was applicable to his claim. However, although I think Amtrust should have made things clearer, they didn't say they would definitely cover the claim, only that they'd consider a claim if things got to the FTT. Any consideration at that point would have involved looking at whether the terms and conditions of the policy were met - such as whether any legal action Mr W wished to take had reasonable prospects of success and was proportionate to pursue - and whether any exclusions applied. Things hadn't reached that stage.

Even if the policy had responded, no cover would have been available for negotiations, only where Mr W took legal action. Mr W says he would have approached discussions with the neighbours differently if he'd understood the claim wouldn't be covered at all. Even if Mr W had known that, there's no guarantee he'd have achieved a satisfactory settlement before things got to the FTT. I'm not aware Mr W incurred unnecessary costs or that his negotiating position was affected. It isn't reasonable to conclude he'd have been in any better position. And Amtrust had made the policy position clear by early November. So, it was still open to Mr W to try and resolve his dispute once they'd told him.

Bearing everything in mind, I'm not persuaded it would be fair to require Amtrust to cover the claim based on what had happened when they issued their response to Mr W's complaint in January 2023.

Amtrust agreed to get legal advice about the trespass issue. From what I understand, they were prepared to look at whether Mr W might have a claim against the neighbour for trespass or nuisance so as to bring him within the policy cover in some way. I think that was a reasonable response from Amtrust.

Amtrust shared the advice they got from the solicitors with Mr W. And they put Mr W's objections about the solicitors' conclusions to them for consideration. But the solicitors didn't change their advice to Amtrust. I'm aware Mr W still disagrees with it. But I can't decide if the advice was right or wrong. I can only consider whether it was reasonable for Amtrust to rely on it. From a layman's point of view, there's nothing obviously wrong with the advice and I'm not aware it contains any factual errors. The solicitors giving the advice were appropriately qualified and had relevant experience. So, I'm satisfied it was reasonable for Amtrust to rely on it in continuing to decline the claim.

Amtrust have given Mr W the opportunity of submitting his own legal advice in response to their solicitors' advice. Provided the advice meets certain conditions and addresses certain issues, if it supports Mr W's policy claim, Amtrust say they will pay for a barrister's opinion. And they say that if that opinion supports the claim, they will provide cover. I think that's a fair way of taking things forward for Mr W bearing everything in mind.

I know Mr W would have liked us to consider the legal advice he is getting before coming to a decision about this complaint. But even if the advice he gets supports his position, I wouldn't be able to decide if Amtrust should cover that complaint. Both parties have had the chance of commenting on the solicitors' advice Amtrust obtained. And Amtrust need to have the chance of considering Mr W's legal advice before we do to see if it changes their mind about policy cover. If it doesn't, and Mr W remains unhappy, he can complain again. And if he's unhappy with Amtrust's response, he can bring a new complaint to the Financial Ombudsman Service.

Considering everything, I think the £100 compensation Amtrust offered Mr W was fair and reasonable to resolve his complaint bearing in mind they wrongly advised him a section of the policy would respond to his claim before clarifying things. So, for the reasons I've set out, whilst I understand Mr W's strength of feeling and acknowledge he will be disappointed, I don't uphold his complaint.

My final decision

For the reasons I've set out, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 28 November 2023.

Julia Wilkinson
Ombudsman