

The complaint

Mr and Mrs W complain that Amtrust Europe Limited rejected a claim on their legal expenses insurance policy.

Where I refer to Amtrust, this includes its agents and claims handlers acting on its behalf.

What happened

Mr and Mrs W had a dispute with a builder about work carried out on their property. They made a claim on their legal expenses policy to cover the costs of taking legal action against the builder.

Amtrust said the claim wasn't covered, because of an exclusion in the policy which meant it only covered this type of case where the amount in dispute is less than £5,000. Amtrust said the amount in dispute was more than this.

Mr and Mrs W complained. They said the exclusion amounted to an unfair term and should not be applied but Amtrust didn't agree.

When they referred the complaint to this Service our investigator didn't think it should be upheld. She said Amtrust had applied the policy terms fairly. So Mr and Mrs W have requested an ombudsman's 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.

The policy includes cover for breach of contract claims like the one Mr and Mrs W wish to bring but claims relating to construction or building disputes are excluded, unless the amount in dispute is less than £5,000.

The policy only provides cover where the claim meets the requirements set out in the terms and conditions, including that it has a reasonable chance of success. I'd expect an insurer to refer this to a solicitor to assess and that's what Amtrust did.

In their initial assessment, the solicitors noted the exclusion for claims about construction disputes where the amount is above £5,000 and said this appeared to apply.

Mr and Mrs W indicated the amount in dispute was less than £5,000 but in further correspondence the solicitors advised that, while it wasn't clear what the value of the claim was, the cost of the contracted work was £52,000 and given the nature and extent of remedial work needed, the cost of that work was likely to be more than £5,000. The solicitors said the exclusion would apply, but if Mr and Mrs W could show the required work would cost less than £5,000 then they could continue with the claim.

Given the explanation by the solicitors, it was reasonable for Amtrust to rely on what they said about cover for the claim and ask Mr and Mrs W for information about the amount in

dispute. Mr and Mrs W haven't shown the cost of the outstanding work is less than £5,000. (Indeed, on their claim form they had said it was likely to be £70,000). But they argue the term is unfair. They have referred to the Consumer Rights Act 2015 in support of this.

It's not for me to determine the law. My role is to decide whether Amtrust acted fairly when applying the policy terms. I need to take account of any relevant law when considering this, but that doesn't mean I have to apply the law in exactly the same way as a court. Rather, it's one of the things I take into account when deciding what's fair and reasonable in all the circumstances of the case.

I don't think it is unfair for Amtrust to apply this term. The Consumer Rights Act (and accompanying guidance) sets out what could make a contract term unfair – essentially where a term creates a significant imbalance in the rights of the parties to the detriment of the consumer. But the Act also identifies the need to take into account the subject matter of the contract, all the circumstances existing when the term was agreed and all the other terms of the contract.

No insurance policy will cover every risk that may result in a policyholder suffering financial loss. It's for insurers to decide what risks they want to accept and they will consider this when deciding whether to offer a policy – and how much to charge for it. Insurance is always subject to terms and conditions that limit the insurer's liabilities to its policyholders. If a policy covered all foreseeable risks, the premium would be unaffordable for most people. So terms like this are not inherently unfair or unreasonable.

In this case, Amtrust is providing cover for a range of legal disputes but wants to limit cover for this type of claim. Building disputes can be complex and expensive, often requiring expert evidence. It's not unusual for policies to limit cover for building disputes in this way.

Although Mr and Mrs W argue the exclusion unfairly restricts cover and prevents them making use of the policy, I don't think that's the case. The term doesn't remove Mr and Mrs W's right to make a claim. The rest of the cover provided by the policy is still available to them; it's simply that a limit of £5,000 is in place for this particular type of dispute. And this is clearly set out in the policy terms.

I know the situation has been very difficult for Mr and Mrs W; they naturally have concerns about the building work and the affect this has had on their home. But those issues are between them and the builder.

I can only consider the way the insurance claim has been dealt with and for the reasons set out above, I'm satisfied Amtrust's decision is in line with the policy terms and is fair.

My final decision

My final decision is that I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W and Mrs W to accept or reject my decision before 17 November 2023.

Peter Whiteley
Ombudsman