

The complaint

Mr and Mrs F's complaint is about a claim they made on their Amtrust Europe Limited ('Amtrust') legal expenses insurance policy.

Mr and Mrs F say that Amtrust treated them unfairly.

In this decision all references to Amtrust include their claims handlers.

What happened

In November 2020 Mr and Mrs F made a claim on their Amtrust legal expenses insurance policy for cover to bring a claim against a third party.

Amtrust accepted the claim in the first instance and passed it to their panel firm of Solicitors to consider it further. The panel firm determined that Mr and Mrs F's claim didn't have reasonable prospects of success, as required by the policy. As such Amtrust said they wouldn't fund their claim.

Unhappy, Mr and Mrs F complained to Amtrust. In doing so they said they'd had to appoint their own Solicitor to help them with their dispute as they'd received correspondence from the third party's Solicitor which required a response. They also said they could supply all of the documents their own Solicitor had relied upon when responding to the third party. At the same time Mr and Mrs F wrote to the panel firm raising a complaint about their assessment and attaching a file of correspondence requesting they reassess their claim.

The panel firm reconsidered their position and took the view that Mr and Mrs F's claim did enjoy reasonable prospects of success, but said they didn't have enough information to determine whether the claim had reasonable prospects of recovery. They also pointed out that Mr and Mrs F hadn't paid the balance of the third party's invoice so this might be deducted from any damages that might be awarded to them.

It then emerged that an offer to settle the dispute had been made by the third party. Amtrust asked the panel firm if this offer was reasonable, but the panel firm said that Mr and Mrs F hadn't provided them with details of this. Amtrust asked Mr and Mrs F to supply the panel firm with details of this offer, which Mr and Mrs F agreed to.

In April 2021 the panel firm confirmed their advice in respect of the offer made by the third party. They said that in the circumstances the offer was reasonable, and that Mr and Mrs F should accept it. On that basis Amtrust told Mr and Mrs F that they wouldn't cover their costs unless Mr and Mrs F accepted the offer to settle the dispute.

Mr and Mrs F provided the panel firm with further information about their claim following this, but the panel firm remained of the view that the offer to settle the dispute was reasonable.

In April 2023 Mr and Mrs F told the panel firm and Amtrust that whilst the third party had made two offers to settle the dispute, he had stopped responding to communications which resulted in their pursuing a claim at Court against him. They confirmed the matter was listed

for trial that month and said they needed urgent representation to assist them with this.

In response the panel firm asked Amtrust for funding to reassess the matter, which Amtrust agreed to. In reassessing the claim, the panel firm concluded that Mr and Mrs F had, by claiming against the third party for damages without offsetting the amount owed to him, prejudiced their position and by not accepting a reasonable offer which they would now be unlikely to match at trial. The panel firm also said there had been prejudice as a result of Mr and Mrs F notifying them of their trial date so late, that an advocate might not be available given the time the trial was notified, that there were limited prospects to the claim and therefore funding by Amtrust was now unlikely. Following this Amtrust told Mr and Mrs F they wouldn't fund their claim further.

Later that month Mr and Mrs F contacted the panel firm to say they'd been successful at trial but wanted to appeal part of the judgement on the basis that they'd been penalised in monetary terms for not having accepted the settlement offer previously made by the third party. They asked for cover to pursue this appeal. The panel firm advised Amtrust that the outcome accorded with their previous assessment and said that Mr and Mrs F had prejudiced their position by taking the action they did. As a result, they said that it would be disproportionate for funding to be provided now. Following this Amtrust explained to Mr and Mrs F that further funding was not available to them.

Unhappy Mr and Mrs F complained to Amtrust. They also sought reimbursement of some of the costs they incurred in the case themselves. Amtrust declined to cover these.

Our investigator considered Mr and Mrs F's complaint and concluded that it shouldn't be upheld. She said that Amtrust were entitled to rely on the panel firm's assessment of their claim and the advice received about the third party's offer to settle it. As such the investigator said that Amtrust did not act unreasonably when turning down Mr and Mrs F's requests for funding. Mr and Mrs F don't agree, so the matter has been passed to me to determine.

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.

Having done so, I won't be upholding Mr and Mrs F's complaint. I've explained why below. Before doing so, I want to make clear that I have considered all of the detailed submissions Mr and Mrs F have made in respect of their complaint, but I won't be addressing all of them here. That's not intended to be disrespectful. Rather it represents the informal nature of the Financial Ombudsman Service. In this decision I've concentrated on the crux of this complaint- namely whether Amtrust's actions were reasonable in the circumstances.

The starting point is the policy terms. They say:

"This insurance does not provide cover where something you do or fail to do prejudices your position or the position of the insurer in connection with the legal action."

It also says:

"If against our advice such offers or payments are not accepted, cover under this insurance shall be withdrawn unless we agree in our absolute discretion to allow the case to proceed".

In this case Amtrust agreed to reconsider funding Mr and Mrs F's claim provided they accepted the offer put to them by the third party, which the panel firm said was reasonable in

April 2021. It's clear from everything I've seen that Mr and Mrs F didn't accept that offer. Rather they decided to pursue the matter themselves. And it wasn't until two years later that they got back in touch with Amtrust asking for help with the dispute, which had moved on considerably by then. Neither Amtrust or the panel firm were involved in the underlying claim for that two-year period and the issue of funding was in my view left clear at the point at which Amtrust told Mr and Mrs F that they wouldn't fund the claim any further if Mr and Mrs F didn't accept the offer made by the third party.

Where an insurer has declined funding in such a case, it isn't for us to evaluate the merits of the underlying claim. Instead, and as the investigator explained, we look at whether the insurer has acted fairly. So long as they have got advice from suitably qualified lawyers, we won't generally question their reliance on that advice, unless we think it was obviously wrong or based on factual mistakes. I'm satisfied Amtrust did this.

The people advising Mr and Mrs F were supervised by lawyers who were suitably qualified and experienced in the area of law they were asking for help with, and I've seen nothing that suggests the advice was based on factual mistakes or obviously wrong. I appreciate Mr and Mrs F don't agree with the advice they received but that's not something I can consider. If, at the time they'd provided an alternative reasoned opinion on whether the offer made by the third party was not reasonable, I might have reached a different view. But in this case Mr and Mrs F did not supply that. Instead, they've said that the third party was unlikely to follow through on paying them anything if they'd accepted the offer because he stopped responding to correspondence after some time. I don't think that makes a difference here. Whether the third party didn't follow through on paying Mr and Mrs F anything after he'd made the offer that the panel firm advised was reasonable is immaterial. That's because acceptance of that offer would've afforded Mr and Mrs F cost protection in doing so. And that's what would've been important given Amtrust would have been funding their costs and indeed the other party's if Mr and Mrs F were ordered to pay those costs at trial.

And although I understand that Mr and Mrs F might have thought the advice given by the panel firm was unreasonable, they didn't provide anything at the time or even now, other than their own opinion to properly dispute this. That's not something we would take into account. Accordingly, I take the view that it was reasonable for Amtrust to determine they wouldn't cover anything Mr and Mrs F were claiming for when they came back to them in April 2023. It follows that Amtrust were entitled to turn down cover for all of Mr and Mrs F's further requests to fund the trial of this matter, an appeal and legal costs incurred to date for the same reasons I've set out above.

I know Mr and Mrs F have incurred their own legal fees too when Amtrust turned down funding when the panel firm said the claim didn't have reasonable prospects of success. For clarity, I don't think Amtrust are responsible for these. That's because the policy only covers costs that Amtrust have agreed to and Amtrust didn't authorise these costs before they were incurred. They were costs Mr and Mrs F decided to fund themselves without Amtrust's involvement. So Amtrust don't need to pay them.

In reaching my conclusions I've not considered the conduct of the panel firm because that's simply not within my remit to do so. That includes any delays Mr and Mrs F say they caused or the advice they gave. If they remain unhappy with the conduct of the panel firm, they can complain to them directly or to the Legal Ombudsman.

I have however considered whether Amtrust delayed responding to Mr and Mrs F directly during the course of their claim and I'm not satisfied that that they did. As the investigator said, the time it took for their claim to be assessed initially was around a month- which is not an exceptionally long time in the circumstances. And given this isn't a claim that Amtrust eventually funded, I'm not persuaded that any delays would have prejudiced their claim in

any event.

My final decision

For the reasons set out above, I don't uphold Mr and Mrs F's complaint against Amtrust Europe Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs F and Mr F to accept or reject my decision before 27 May 2024.

Lale Hussein-Venn
Ombudsman