

## **The complaint**

Ms T's complaint is about a claim made under an "after the event" legal expenses insurance policy with Amtrust Europe Limited.

Amtrust are the underwriters of this policy i.e. the insurer. Part of this complaint concerns the actions of the agents it uses to deal with claims on its behalf. As Amtrust has accepted it is accountable for the actions of the agent, in my decision, any reference to Amtrust includes the actions of the agents

## **What happened**

In 2018, Ms T was approached by solicitors regarding a potential claim in relation to home insulation. The solicitors acted on a "no win, no fee" basis but arranged a loan on behalf of Ms T to cover the costs and disbursements in pursuing the claim. The solicitors also arranged the "after the event" insurance policy on behalf of Ms T to protect against any adverse costs order made against her and to cover the loan and any interest, if her claim was not successful.

In November 2020, the solicitors determined that Ms T's legal claim would not succeed, so they could not take any further action. I understand that legal proceedings had not been issued. The solicitors said there were no fees for Ms T to pay and that they'd submit a claim under the insurance with Amtrust. In April 2021, the solicitors told Ms T that Amtrust was conducting an audit of its files and so there would be a delay in closing the case and repaying the loan.

The solicitors were placed into administration in November 2021 and so its files were transferred to another law firm. Ms T didn't hear anything further until the new solicitors contacted her in September 2022 and told her that the file had not been closed properly and they'd need to submit a claim under the policy for the costs which would repay the loan to the loan provider. They also told Ms T that even if Amtrust decided the insurance claim should not be paid (because of some breach of policy condition by the original solicitors) the loan provider had confirmed it would not pursue Ms T for repayment (unless there had been fraud on her part). The solicitors also told Ms T that the loan is not recorded on her credit file and so has no impact on her, although she would continue receiving annual statements from the loan provider.

Ms T did not hear anything further, so contacted the solicitors again in June 2023. They told her the matter was still ongoing and to contact Amtrust direct, which she did. Amtrust told Ms T that it was looking into the conduct of the original solicitors and could not confirm when the case would be closed. Amtrust also said she may receive statements from the loan provider in relation to the loan, but she did not need to take any action as the loans were "non-recourse", meaning that she would not be required to repay it.

Ms T remained unhappy with this and made a formal complaint to Amtrust about the time taken to close her file. In its final response letter to Ms T's complaint, Amtrust said there was a large-scale litigation (involving thousands of similar claims) ongoing between it, the loan

provider and the original solicitors' professional indemnity insurers. Amtrust said it could not confirm how the loan would be settled but it could not settle her loan in the meantime, as it would prejudice its position in regards to the ongoing litigation. Amtrust again stated that the loan would not need to be repaid by Ms T regardless of the outcome of the litigation.

Ms T remains very unhappy with this. She says that Amtrust provided the insurance policy to the solicitors and she should not be impacted by any problem Amtrust now has with how the solicitors acted. Ms T also says that her file was sent to be closed before Amtrust decided to audit the solicitors' files and if Amtrust had dealt with the claim promptly then, she would not be involved with this now.

Ms T says the loan statements she's receiving show the outstanding balance increasing dramatically with no closure date in sight and this is causing her great concern. This is on her mind all the time.

One of our Investigators looked into the matter. She did not recommend that the complaint be upheld as she did not think that Amtrust had done anything wrong. The Investigator acknowledged the difficulty of Ms T's position but said Amtrust had given her assurances that Ms T would have no liability for the loan and it was entitled to continue its process.

Ms T does not accept the Investigator's assessment, so the matter has been passed to me.

Ms T says that while Amtrust has given some assurances about the loan, it is impossible to be at ease until the loan is confirmed as being paid. She also says there was no previous mention of litigation, so it seems the goal posts are moving; and she cannot understand why her case was not closed prior to the audit. Ms T says it is unfair that the Amtrust's concerns over the solicitors' integrity is affecting her.

### **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.

I can completely understand Ms T's concern that there is a large loan, still accruing interest, in her name and which has not been repaid. However, I can only consider the actions of Amtrust as an insurer. I cannot consider the actions of the original solicitors, the solicitors that took over their files or the loan provider.

Ms T says that Amtrust should have dealt with her claim and paid back the loan in November 2020, which is when the solicitors told her it was submitting the claim to Amtrust, and if it had done so she would not now be impacted by the audit and litigation. However, the solicitors that took over her file said in their letter in September 2022 that the claim would need to be submitted to Amtrust, so it seems likely that the original solicitors did not submit the claim in November 2020. In any event, even if they did submit it then, Amtrust was entitled to decide to audit and review any claims and policies and Ms T was informed by her solicitors that this was happening in April 2021. Having looked at everything provided, I am not persuaded that it is reasonable to conclude that Amtrust should have dealt with Ms T's claim and repaid the loan in late 2020.

Amtrust has said it has concerns about the original solicitor's conduct in relation to a large group of cases, including Ms T's, which will determine whether it is liable to pay the loans being claimed. It is entitled to investigate that and take appropriate action. Amtrust has said it is now in litigation about this, with loan provider and the solicitors' professional indemnity insurer.

Ms T says the concerns and litigation were not mentioned previously so the goal posts are moving. However, it seems likely to me that this has just evolved over time. Ms T was told in early 2021 that Amtrust wanted to audit the solicitors' cases and it seems that as Amtrust's concerns were not resolved, this has now ended up with litigation. I do not see that this is Amtrust moving the goal posts but just that there was a course of events.

In my opinion, Amtrust was entitled to review Ms T's case and having done so have its liability under Ms T's policy and the others involved determined by the courts, as it is doing. Ms T says that she should not be adversely impacted by any issues between the solicitor and Amtrust. However, the solicitors were appointed by her and acting on her behalf. And the concerns raised by Amtrust might affect whether Amtrust is liable to meet the cost of the loan in her name. So, unfortunate as it is, Ms T does have to wait until the matter has been resolved.

Having said that, I do expect Amtrust to act reasonably towards Ms T in the meantime, so I have considered what it has told her. I can see that Amtrust has sought to assure Ms T that she will not have any personal liability, whatever the outcome of the dispute between it and the other parties involved. It explained this in its first communication with Ms T and I note in its final response letter to Ms T, Amtrust said:

*"I wish to reassure you that the loan is 'non-recourse' and you will not be asked to pay any part of this, nor will this affect or impact your credit history. It is my understanding that a 'non-recourse' loan places more financial responsibility on the lender and this means you are protected from personal liability. You can safely ignore any statements in relation to the loan."*

It seems to me that Amtrust has therefore acted fairly and reasonably in its communications with Ms T.

Having considered everything carefully, while I have sympathy for Ms T's position and can understand her worries, I do not consider that this is due to anything that Amtrust has done wrong. I do not therefore consider that there is any award or direction I can reasonably make against Amtrust based on the evidence provided to me.

### **My final decision**

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms T to accept or reject my decision before 7 February 2024.

Harriet McCarthy  
**Ombudsman**