

The complaint

Mr and Mrs T's complaint is about a claim they made on their Amtrust Europe Limited ('Amtrust') landlord legal expenses insurance policy, which Amtrust declined to cover.

Mr and Mrs T say that Amtrust treated them unfairly.

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

What happened

Mr and Mrs T made a claim on their Amtrust landlord's legal expenses insurance policy for cover to deal with problems with their tenant.

Amtrust asked Mr and Mrs T for further information about their claim, including all of the documents relevant to the problems they were having with their tenant. Following this Mrs T called Amtrust directly to discuss the claim. During the course of that conversation, Mrs T told Amtrust that she hadn't taken a deposit from her tenant and hadn't obtained a reference either.

Amtrust considered this and concluded that Mr and Mrs T's claim wasn't one that they could cover under the policy because it was a requirement that both a deposit be taken, and a reference obtained in advance of the tenancy.

Unhappy, Mr and Mrs T referred their complaint to the Financial Ombudsman Service. Our investigator considered their complaint and said that it shouldn't be upheld because Mr and Mrs T hadn't complied with the conditions of the policy. Mr and Mrs T don't agree so the matter has been referred 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 don't uphold Mr and Mrs T's complaint. This is why.

The starting point is the policy terms. They say:

"What is not covered

There is no cover for claims:

9 Where you have allowed the tenant into possession of the insured property before the tenancy agreement had been signed by all parties, a tenant reference has been obtained, the first month's rent and the deposit have been received in cash or cleared funds and the dilapidations inventory has been signed by the tenant."

In this case there's no dispute over the fact that Mr and Mrs T didn't obtain a reference for their tenant or take a deposit. Instead, they say that this term was never made clear to them when they took the policy out or when they subsequently renewed it, so they didn't know they had to do this to benefit from the insurance. They have said they want the policy

premiums returned to them as a result.

As the investigator explained, Amtrust didn't sell Mr and Mrs T the policy so they're not responsible for the information given to them about it. Amtrust are the insurer so the cover they've offered is subject to the policy's terms and conditions and in this case, the policy conditions haven't been met in relation to both a reference and a deposit being taken. Because of this I can't say that Amtrust needed to cover Mr and Mrs T's claim. I don't think that's unfair given those terms are in place to mitigate the risk to Amtrust. And Amtrust are entitled to decide the risks they are and aren't prepared to take on. In this case, they were clear about those within their policy terms. In the absence of Mr and Mrs T complying with the policy requirements, I can't say Amtrust need to do any more.

I appreciate that Mr and Mrs T have incurred their own legal costs due to the absence of cover, but I can't say that Amtrust are responsible for this. Amtrust did offer Mr and Mrs T the benefit of the legal helpline if they wanted to pursue the matter themselves. I understand that the legal helpline couldn't help Mr and Mrs T because they only deal with enquiries by tenants rather than landlords. Mr and Mrs T say they were referred to the Citizens Advice Bureau instead. I know that this would no doubt have been frustrating for them but for the reasons I've set out above, I don't think Amtrust needed to cover this claim so they weren't obliged to offer Mr and Mrs T with an alternative legal service in the absence of cover.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T and Mrs T to accept or reject my decision before 4 December 2023.

Lale Hussein-Venn
Ombudsman