

The complaint

Mr A's complaint is about a claim he made on his Amtrust Europe Limited ('Amtrust') property owners insurance policy in respect of a claim for unpaid rent and damage to his property by a former tenant.

Mr A says that Amtrust treated him unfairly when they withdrew cover to support the legal costs of pursuing his claim.

What happened

Mr A made a claim on his property owners insurance policy to pursue a claim for unpaid rent and damage to his property by a former tenant.

Amtrust accepted the claim in the first instance and passed it to their panel firm of Solicitors to consider. After providing Mr A with some assistance the panel firm concluded that his claim didn't have reasonable prospects of success and that the costs of proceeding with it would outweigh the costs involved in recovering the sums claimed against the former tenant. As a result, Amtrust said they weren't prepared to continue funding Mr A's claim because it didn't fall within the policy requirements. Unhappy, Mr A referred his complaint to the Financial Ombudsman Service.

Our investigator considered Mr A's complaint and concluded that Amtrust were entitled to rely on the opinion of their panel firm of Solicitors when turning down cover. Mr A doesn't agree so the matter has been passed to me to determine. In particular he says:

- The term Amtrust have relied on gives all insurers the ability to unfairly decline claims.
- It's pointless having insurance in place if it's not going to extend to covering situations like the one Mr A finds himself in, for which he has paid policy premiums.
- There are good prospects of recovery in his claim as the former tenant had a Guarantor who is in full time employment and owns her own property. This wasn't adequately explored by Amtrust.

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 A's complaint. I'll explain why.

The starting point is the policy terms. It's a requirement of virtually all legal expenses insurance policies that any intended claim has a reasonable prospect of succeeding and is proportionate to pursue. In the case of Mr A's policy, the requirement is that he has more than a 50% chance of winning his case and achieving a positive outcome. In addition, his policy says:

“Proportional Costs

An estimate of the Advisers' Costs to deal with Your claim must not be more than the amount of money in dispute. The estimate of the Advisers' Costs will be provided with the assessment of Your case and will be carried out by the independent Adviser. If the estimate exceeds the amount in dispute then We may decline or discontinue support for Your case.”

We don't think this is unfair. Litigation can be expensive. A privately paying customer wouldn't want to bear the cost if advised they're unlikely to succeed or will spend more in costs trying to recover the sums they are seeking. We wouldn't expect a legal expenses insurer to fund claims in these circumstances either.

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. Amtrust did this.

I'm satisfied that the advice given was supervised by someone that was suitably qualified in the area of law Mr A was asking for help with, and I've seen nothing that suggests his advice was based on factual mistakes. I appreciate Mr A doesn't agree with the advice he's received but that's not something I can consider. If he were to provide an alternative reasoned opinion from a comparable legal professional, then I would expect Amtrust to consider that. Equally, if he provided Amtrust with any new evidence or information that has now come to light that might change the outcome of the panel firm's assessment on proportionality, I would expect Amtrust to refer that back to their panel firm. But as matters stand, I can't say Amtrust did something wrong by relying on the legal opinion they received.

I appreciate Mr A's comments about the purpose of the insurance being intended to cover claims like his. Whilst that might be right, the cover he took out is subject to the terms I've referred to above and I don't consider those terms to be unreasonable for the reasons I've mentioned. Equally I don't think that Amtrust has unreasonably applied those terms in this case. The advice received wasn't that there were no prospects of recovery – which is what Mr A appears to be alluding to when he talks about enforcement being possible against his former tenant's guarantor- but rather that it would be disproportionate to pursue the claim to conclusion given the amount of money at stake. In addition to this there were also concerns that the prospects of such a claim weren't above the 51% threshold.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 14 March 2024.

Lale Hussein-Venn
Ombudsman