

The complaint

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

Mr and Mrs D feel that Amtrust treated them unfairly.

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

What happened

In 2020 Mr and Mrs D made a claim on their Amtrust legal expenses insurance policy for cover to bring a claim in relation to a boundary issue with their neighbour. Amtrust appointed a panel firm to consider the matter who commented that expert evidence would be necessary to establish whether Mr and Mrs D's claim had reasonable prospects of success. Nothing further happened in relation to this specific claim beyond that.

In 2023 Mr and Mrs D asked Amtrust to help them deal with problems with their neighbour stemming from the same issues but in relation to new issues that arose. In doing so they provided a report from a chartered surveyor. Amtrust considered the claim and referred it back to the same panel firm. There were some delays in the panel firm responding but eventually they reviewed things afresh and concluded that although Mr and Mrs D's claim did have reasonable prospects of success, they didn't think it would be proportionate to pursue. As such Amtrust said they weren't prepared to cover the claim as it didn't fall within cover.

Unhappy Mr and Mrs D supplied further comments to Amtrust, which Amtrust referred back to the panel firm. The panel firm considered those comments and said they remained of the view that the claim wasn't proportionate to pursue. Amtrust said that if Mr and Mrs D obtained a contrary legal opinion setting out that the claim was proportionate to pursue, they would reconsider funding the matter.

Mr and Mrs D made a complaint to the Financial Ombudsman Service about the handling of their claim. Our investigator considered this and concluded that their complaint should not be upheld. Mr and Mrs D didn'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 D's complaint. I'll explain why.

Mr and Mrs D have made considerable submissions in this complaint. I won't be addressing each one of those in this decision. Rather, I'll deal with the main points they're unhappy with. That's not to say that I haven't taken into account everything they've said. My approach simply reflects the informal nature of the Financial Ombudsman Service.

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. Mr and Mrs D' policy is no exception. That means their claims needed to have over 51% prospects of succeeding in order for Amtrust to cover them and the costs of any intended claim be less than the amount they are likely to recover.

We don't think this is unfair. Litigation can be expensive. A privately paying customer wouldn't want to bear the cost if advised it is unlikely to succeed or if they're likely to pay more in costs than they are likely to recover. 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 person advising Mr and Mrs D was supervised by someone suitably qualified and experienced in the area of law Mr and Mrs D were asking for help with, and I've seen nothing that suggests his advice was based on factual mistakes. I appreciate Mr and Mrs D don't agree with the advice they've received but that's not something I can consider. If, as Amtrust said, they were to provide an alternative reasoned opinion from a comparable Solicitor (and not something summarising any advice they might have been given themselves), then I would expect Amtrust to consider that. Equally, if they provided Amtrust with any new evidence or information that has now come to light that might change the outcome of their assessment, like a further Chartered valuer's report commenting on the diminution of the value of their property as a result of the actions of their neighbour, I would expect Amtrust to refer that back to their panel firm. But as matters stand, I can't say Aviva did something wrong by relying on the legal opinion they received.

I appreciate that Mr and Mrs D don't agree with the way in which their claim was handled. They don't feel it was clear or fair. But I don't agree. The policy terms make clear the prospects and proportionality requirement and that a lawyer will assess their case to determine their chances of winning. So, whilst Mr and Mrs D might have expected the evidence, they provided some three years later to be enough to establish that their claim would more likely than not succeed and be proportionate to pursue, I don't think Amtrust misled them or did something wrong by appointing their own panel firm to consider the position when they got back in touch in 2023.

If Mr and Mrs D's claim was found to have reasonable prospects of success and be proportionate to pursue, Amtrust would ultimately be responsible for Mr and Mrs D' legal costs, so they're entitled to take advice on this issue. I appreciate that Mr and Mrs D don't agree with that advice but that doesn't mean Amtrust were wrong to turn their claim down. As Amtrust said Mr and Mrs S are entitled to challenge the advice they received with reference to their own legal opinion if they think this is wrong. And from what they've said they seem to have obtained legal advice elsewhere so it's up to them to put this to Amtrust if they want their claim reconsidered. Mr and Mrs D should note that any opinion they provide will need to be fully reasoned and come from a comparable legal professional, commenting on both the prospects of success of the claim as well as whether it's proportionate to pursue. In the absence of their being able to provide that I can't say the position Amtrust have taken is unfair.

I know Mr and Mrs D are unhappy that they weren't specifically told there was a risk their claim might not be proportionate to pursue if they obtained a chartered surveyor's report, but I don't think Amtrust needed to do this in the same way they didn't need to say the report might not establish the claim had reasonable prospects of success. The purpose of the

report was to establish whether this was a claim Amtrust could cover. Once Mr and Mrs D provided this, the panel firm accepted that the claim did have reasonable prospects of success but also noted that the extent of the trespass complained of appeared to be one half of a manhole cover extending onto Mr and Mrs D's property. It was for this reason that they said the claim didn't appear to be proportionate to pursue. So, I think the report served the purpose for which it was intended in this case- to help support whether there was a claim capable of cover. Without this evidence, it wouldn't have been possible for the panel firm to advise either way. The fact that the evidence wasn't favourable to Mr and Mrs D isn't something Amtrust is responsible for.

I note that Mr and Mrs D have complained that this legal expenses policy was mis-sold to them. I'm not considering this issue within this complaint. If Mr and Mrs D wish to pursue a mis-sale complaint, they will need to raise it with the business who sold them the policy in the first instance.

Mr and Mrs D have talked about advice they were given by Amtrust's legal helpline. This issue didn't form part of their initial complaint and hasn't been addressed by Amtrust. Because of this I can't address it within this decision. If Mr and Mrs D remain unhappy about this specific issue, they will need to raise it with Amtrust in the first instance.

Finally and for the sake of completeness, I haven't seen any considerable delays in Amtrust's handling of Mr and Mrs D's claim, such that I consider they prejudiced them in any way or that Amtrust need to do anything more to put things right. It's true that there was a delay in the panel firm responding but from what I've seen Amtrust chased them accordingly. And given Mr and Mrs D's claim isn't one that Amtrust has agreed to fund, I'm not persuaded that any delays would have adversely impacted on the progress of their claim in any event.

If Mr and Mrs D remain unhappy with the actions of the panel firm, they can raise a complaint with them directly or address this with the Legal Ombudsman.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D and Mrs D to accept or reject my decision before 23 April 2024.

Lale Hussein-Venn
Ombudsman