

The complaint

Mr and Mrs B complain about Amtrust Europe Limited's handling of claims they made on a legal expenses insurance policy.

While Mr and Mrs B are joint policyholders and bring this complaint to our service together, almost all of the contact with Amtrust and our service has been with Mr C. Where I refer to Mr B within this decision, this should be taken to include Mrs B.

Amtrust uses a separate company to administer claims (and complaints about claims) on the policy. Where I refer to Amtrust within this decision, this includes this representative working on its behalf.

What happened

Mr and Mrs B hold a legal expenses insurance policy provided by Amtrust as an add-on to a home insurance policy. Mr B approached Amtrust on two occasions, in 2020 and 2021, as they wanted to take legal action against a neighbour in respect of various issues which had arisen. The nature of these disputes is well known to the parties but not relevant to my consideration of the complaint.

Mr B has made complaints about the way these claims were handled to Amtrust, which has rejected the complaints. He's been unhappy with the length of time taken to progress the claims, the decisions taken about the solicitors appointed by Amtrust and the communication from Amtrust. He also disagrees with the assessments that have been made that the claims didn't enjoy prospects of success or that the costs of pursuing actions would be disproportionate. He's additionally complained that Amtrust have disclosed personal information without consent, and that it has unreasonably refused to provide details of the solicitors who completed the most recent assessment for Amtrust.

Amtrust rejected his complaints, so he approached our service. Our investigator thought that Amtrust could fairly rely on the assessments of the solicitors and so had acted reasonably when it declined cover for Mr and Mrs B's claims. As I noted that other aspects of the complaints weren't addressed, and so issued a provisional decision. Both parties have responded to my provisional decision, and having reviewed their submissions, I'm now in a position to issue this final decision.

My provisional decision

In my provisional decision, I said:

The first point I want to address is Mr B's dissatisfaction that the complaints he's raised about Amtrust, and the claims he made, have been considered as one complaint by our service. I agree with this position. While Mr B has approached Amtrust on two separate occasions, and made two distinct complaints covering multiple points, which have resulted in two final responses being issued by Amtrust, I'm satisfied that the matters can be properly addressed within one decision.

It's clear from the correspondence between Amtrust and Mr B that he's dissatisfied with the way that Amtrust has responded to his claims, but I think it was fair for Amtrust to treat them as one ongoing matter as all of the points raised relate to various disputes with one neighbour about a number of alleged nuisances and trespasses.

I'll address the various issues raised by Mr B in his complaints to Amtrust separately.

The decision to decline cover for legal expenses

It seems to me that the biggest issue for Mr and Mrs B is Amtrust's decisions that the various claims they've made for nuisances and trespasses don't enjoy reasonable prospects of success or the costs of pursuing actions would be disproportionate. Those assessments mean that Amtrust won't cover Mr B's legal expenses in pursuing such matters. Mr B doesn't agree with these assessments. He says that they are wrong, and the most recent assessments have been based on irrelevant and incomplete information which was provided to the solicitors assessing the claims.

In common with many legal expenses insurance policies, it's a condition of Mr and Mrs B's policy that a claim has ongoing reasonable prospects of success (ie that if the matter proceeds to court there's a 51% or greater chance of achieving the desired outcome) and that the costs of pursuing such action are proportionate (ie that the projected legal costs are less than the amount being sought).

The legal opinions of various solicitors who've been appointed by Amtrust to assess Mr and Mrs B's claims has been that they don't enjoy reasonable prospects of success or the costs to pursue the claims would be disproportionate. I'm aware that the conduct of one of these solicitors has been referred by Mr and Mrs B to the Legal Ombudsman.

Our service won't comment on a legal opinion unless we think there is something obviously wrong with it, which even a layperson would spot, for example clear factual errors or an obvious misunderstanding of the case. From what I've seen, I can't conclude that this is the case here. I haven't seen anything to suggest that there are significant factual errors or that the solicitors involved have misunderstood what Mr and Mrs B are claiming.

I've considered whether it was reasonable for Amtrust to rely on these opinions, and I'm satisfied that it was. The opinions detail why, in the reviewing solicitor's opinion, the claims would be unsuccessful, and outline options for Mr and Mrs B to pursue as an alternative to legal action. I'm satisfied that Amtrust could fairly rely on these opinions as being detailed and reasoned and forming a legitimate basis on which to make a decision on cover for the claims.

What I can see is that, having communicated the outcome to Mr and Mrs B, Amtrust have acted appropriately by saying that it would reconsider its position if an opposing legal opinion is obtained by Mr and Mrs B which indicates that their claims do have reasonable prospects of success. No such opinion has been provided by Mr and Mrs B to Amtrust to date. Amtrust's position on this remains, I assume, unchanged. If Mr and Mrs B obtain, at their own expense, a legal opinion from a properly qualified legal professional outlining that their claims (or elements of them) enjoy reasonable prospects of success and are proportionate to pursue, then it will review its position with regards to cover under the policy.

Mr B is also unhappy that information relating to the initial claim was sent to the solicitors who assessed the second claim. He says this was irrelevant and meant that the assessment was wrong. I can't agree with this. I've seen the emails sent by Amtrust to the solicitors with the information and can see that this included all of the information he'd sent across both claims.

I'm satisfied that Amtrust acted appropriately by providing all the information it held to the solicitors relating to the disputes between Mr and Mrs B and their neighbour. I think it's to be accepted that in order to come to a holistic view of the matters raised, the solicitors would benefit from sight of all information relevant to the disputes that have arisen, including background information and details of previous disputes. I think it's fair for Amtrust to assume that a properly qualified legal professional will be able to review that information and us what is pertinent and relevant to the matters they've been asked to review.

Amtrust did note that the initial assessment of the second claim was carried out without the benefit of the reviewing solicitors having sight of Mr and Mrs B's completed claim form. When this was noted, the information was sent to the solicitors who confirmed that their opinion was unchanged. On noting that potentially relevant information hadn't been provided, I'm satisfied Amtrust acted reasonably by sending it to the solicitors and asking whether the information within it changed the outcome.

Delays and communication

I'm aware that from an early stage of the first claim Mr B was unhappy about the communication he was receiving from Amtrust and the length of time the claim was taking. This continued to be the case throughout the claims including when Amtrust issued its final responses to the complaints.

I'm satisfied that the communication with Mr B outlined the current position with the claims, the actions which were being taken and what was required from Mr B in order to progress the various matters. I appreciate that Mr B was unhappy about being asked to provide further information but do consider that the requests made were proportionate, appropriate and timely.

While I appreciate Mr B's opinion that the claim was unnecessarily delayed by Amtrust, I'm not satisfied that this is supported by the evidence, save for two short periods which I'll address below. Amtrust has a service level agreement that contact must be responded to within five working days, and despite a large amount of contact being made with Amtrust by Mr B, this was complied with throughout the time that Amtrust was communicating with him, except on one occasion. I can also see that Amtrust were being pro-active in seeking to progress the claims, by requesting information, contacting solicitors and communicating outcomes. I can't agree that Amtrust only took action to progress the claim in response to contact from Mr B chasing updates or progress.

As I said above, I do think however that there were two occasions when there were short periods of delay which can be attributed to Amtrust. During the course of the initial claim, Mr B and Amtrust were sent a letter by solicitors on 12 November 2020 indicating that they'd report back to Amtrust within five working days. On 26 November 2020, Mr B contacted Amtrust to ask for an update. Amtrust responded on 27 November 2020 saying it had received the report from the solicitors that day. It would appear from this exchange that Amtrust didn't receive the report in the timescale that was indicated.

I haven't seen any evidence that Amtrust was chasing this report from the solicitors, and even if it was told that it was delayed there's nothing to suggest that Amtrust updated Mr B to this effect. This was at a time when Amtrust knew of Mr B's dissatisfaction with the way the claim was being handled and also how urgently he wanted to progress these matters. I think this should have been handled better.

The other occasion when a short delay occurred was acknowledged by Amtrust in its correspondence. Mr B had sent an email on 8 November 2021 saying that he didn't want solicitors who'd carried out the previous assessment of the first claim to carry out a new

assessment of his new claim. He sent a further email asking for a response on 10 November 2021, and copied Amtrust into an email he sent to the solicitors on 12 November 2021. On 17 November 2021 he contacted Amtrust by telephone and the following day Amtrust said it would look to appoint a different solicitor to carry out the assessment.

Amtrust's position is that during that period, discussions were taking place in order to progress the claim. I haven't seen details of these discussions but do acknowledge that the new solicitors were provided details of the claim on 18 November 2021 in order to make their assessment.

What is apparent however is that Amtrust didn't respond to Mr B within the required timescale and as such I do think that Mr B could fairly conclude that the claim wasn't progressing.

On balance, however, I don't think that these two periods had a significant impact on the progress of the claims. The delays have been a matter of days, around a year apart. I can't see that these would have impacted on the likelihood that the legal claims being pursued by Mr and Mrs B being successful.

I do think though that the lack of contact when they expected it and the need to chase Amtrust for updates would have had an impact on Mr and Mrs B, causing them distress and inconvenience. In order to recognise this, Amtrust should pay £100 compensation to Mr and Mrs B.

Appointment of solicitors

Mr and Mrs B's claims have been passed by Amtrust for assessments to a number of solicitors, with the movement of the claim being done at the request of Mr and Mrs B who indicated their lack of confidence in the solicitors for various reasons.

What I can see is that the communication of this has been done in line with what I'd expect. Mr and Mrs B have been informed of the relevant terms and conditions for the appointment of solicitors. Amtrust also offered for Mr and Mrs B to have a preferred solicitor carry out the assessment, rather than one of its panel solicitors. They said they'd attempted to do so but had been unable to find solicitors who were willing to work within the terms set by Amtrust. It was suggested in email correspondence (but not documented) that solicitors had declined to work with Amtrust due to previous poor experiences.

I'm satisfied that Amtrust's conduct in the appointment of solicitors to assess the claims was reasonable.

Disclosure of solicitors' details

Mr B complains that Amtrust refused to disclose the name of the solicitors who completed the most recent assessment of the claim's prospects of success. Amtrust says it's provided him with the details of the assessment, including the reasons for their conclusions, but isn't obliged to disclose the name of the solicitors, citing legal privilege.

I'm satisfied that Amtrust has provided Mr B a comprehensive summary of the solicitor's opinion and the reasons why they don't consider the claim has reasonable prospects of success.

Legal privilege allows for communication between a legal professional and their clients to be withheld from third parties. The communications which can be withheld are those made for the purposes of seeking or giving legal advice. The name of the solicitors who gave the

advice is contained in communications made for the purposes of Amtrust seeking, or the solicitors giving, legal advice. In this situation, Amtrust is the solicitors' client – they were seeking legal advice to assess whether they should indemnify Mr and Mrs B's legal expenses. I think it's fair to say that Amtrust could withhold the solicitors' details from Mr and Mrs B under this convention.

Handling and sharing of personal information

Mr B complains here about Amtrust sending information to the solicitors who assessed the second claim, which he says occurred without his consent.

Mr B completed two claim forms for the claims with Amtrust, and both of these included two declarations which said: *"I agree that this information can be forwarded to an appropriate third party but solely for the purposes of assisting or dealing with the claim"*

and

"I also agree that the third party can disclose to Arc Legal any information it reasonably requests from them relating to my claim."

The effect of these declarations, I'm satisfied, is that they allow for the sharing of information provided by Mr B during the claims to be shared with solicitors in order to assist with the assessment of the claims. I think it would be entirely understandable, reasonable and proportionate for Amtrust to need to share information with solicitors in order for properly reasoned and detailed legal assessments of claims to be completed.

After submitting the claim form, Mr B was informed that Amtrust had referred the matter to the solicitors who'd completed the assessment of the first claim. He objected to this as he considered the solicitors would be biased due to an ongoing complaint about their conduct.

On 18 November 2021, Amtrust informed Mr B that they would pass the matter to a different solicitor to review the claim. On 29 November 2021, Mr B indicated that he didn't consent to the sharing of information with the solicitor.

I'm therefore satisfied that Mr B only withdrew consent for the sharing of information with the solicitor after information had already been shared. He'd also consented to the sharing of that information as part of the claim submission.

It would seem to me that it wouldn't be reasonable for Mr B to withdraw his consent for information to be shared with solicitors (who need the information to be able to complete the assessment) while also seeking cover from Amtrust for the claim. I haven't seen any explanation for how it was anticipated that solicitors could complete the assessment if Amtrust didn't share information with them.

Amtrust has said that it sent further information to the solicitors in January 2022 (this being after Mr B had indicated his withdrawal of consent to share information). This was the claim form completed for the second claim (the claim form from the first claim had already been sent). This was done to allow the solicitors to review the information contained within it and assess whether anything within it altered their view that the claim submitted didn't enjoy reasonable prospects of success.

I'm satisfied that Amtrust could reasonably send this to the solicitors, notwithstanding what Mr B had said previously. I say this for two reasons. The first is that I can't see that there's any personal information contained in this claim form which wasn't already available to the solicitors, through the documents and information it had been disclosed prior to Mr B's

withdrawal of consent. The second is that it was done for Mr B's possible benefit – the solicitors had previously stated the claim didn't enjoy reasonable prospects of success and Amtrust's sending of this document was done to see if this would change anything to give a positive assessment.

The response to my provisional decision

Both Mr B and Amtrust responded to my provisional decision.

Mr B didn't accept my provisional findings. He said that it was unreasonable for the information from the first claim to be provided to the solicitors reviewing the second claim as the claim was fundamentally different. Mr B also said that express consent to share data was withdrawn but Amtrust shared data after this.

Finally, Mr B didn't believe that the £100 compensation I'd recommended was acceptable. He said that due to the poor handling of the claim he'd suffered huge upset and wasted a lot of time.

Amtrust also didn't accept my recommendation around compensation, but it said that it shouldn't be required to pay any compensation to Mr and Mrs B.

Amtrust said that the first delay, when the legal opinion wasn't provided in the timescale which the solicitors indicated, wasn't something it should be liable for, and that as the legal advisor had informed Mr B of its timescales, it was open to Mr B to contact the solicitors directly to chase this up.

Amtrust thought that the second delay which was noted was only for two working days beyond its service level agreements. It said it considered the impact of the delays to have been minor and that compensation wasn't warranted because of this.

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've carefully considered the further points raised by Mr B and Amtrust, and reviewed the information available to me. I remain satisfied with my provisional findings and don't believe that anything has been provided which leads me to change my decision.

The matters related to the appointment of the solicitors and the disclosure of solicitors' details haven't been addressed by either party, so I don't intend to go over these again, except to say that my opinion hasn't changed.

I note Mr B's very strong belief that the provision of all of the information to the solicitors who completed the assessment of the second claim was inappropriate and led to irrelevant information being provided. I can't agree with him however that the second claim was fundamentally different to the first. Both claims related to disputes with Mr and Mrs B's neighbour, and the neighbour's use of their property. The exact details of the disputes were different, in that new nuisances and trespasses were being alleged by Mr and Mrs B.

I can't agree that it was inappropriate for the solicitors to be provided with all of the information Amtrust had been provided about the various disputes with the neighbour, regardless of the exact claims being made by Mr and Mrs B. As I said in my provisional decision, I'm satisfied that a properly qualified legal professional would be able to review the information to assess what was relevant to their considerations. I also think it's fair to say the

person assessing the claim would want to have as much information as possible, and everything available to Amtrust, to make a properly reasoned determination about the prospects of success of the claim.

Turning to the allegation of the data breach, I acknowledge that after Mr and Mrs B withdrew consent for their data to be shared, Amtrust did provide a copy of the claim form to the solicitors which it hadn't done before. As I outlined in my provisional decision though, I don't think this was a breach of any data rights as the personal data contained in that form had, from what I can see, already been provided to the solicitors in other forms. The sharing of that information had been done before Mr and Mrs B withdrew their consent. I'm satisfied that when personal data was initially shared with the solicitors, there was no reason for Amtrust to know or believe that Mr and Mrs B didn't consent for this to happen.

Finally, I'll address why I think that compensation should be paid to Mr and Mrs B, and why £100 is a fair amount in the circumstances. I know that Mr B don't think that the amount is sufficient to recognise the upset and time they've spent on this matter. However, Amtrust is only liable for avoidable delays, and for distress and inconvenience that its actions have caused. I've outlined previously why, for the most part, I think Amtrust's handling of the claim was acceptable, even though I appreciate Mr B doesn't agree with this.

I still think however that the two occasions I've identified where the claims could have been handled better remain the responsibility of Amtrust. I note that the delay in the legal opinion being provided was due to the solicitors completing the assessment. However, it's also clear that Amtrust had been told by the solicitors when they would send the assessment, and also how often Mr B was contacting Amtrust for updates and his dissatisfaction with the process was well known and documented at that point. As I said previously, in the circumstances I think it's fair to say that Amtrust could have been more pro-active about chasing the solicitors once the date which had been given for the assessment to be provided had passed. While Amtrust isn't liable for the delay in the assessment being provided, I think it is liable for not chasing this up and updating Mr B sooner.

I'm also conscious that the second delay was a matter of days, and didn't significantly affect the progress of the claim. However, it doesn't seem to be disputed that correspondence from Mr B wasn't acknowledged as it should have been, and in that time he then sent further emails asking for updates.

While the impact of these delays on the progress of the claims was, I'm satisfied, minimal, the impact on Mr and Mrs B was more than this. While Amtrust may consider that they had unreasonable expectations around the process of the claims, it is clear to me that Mr and Mrs B felt very strongly about the importance of progressing the claims and resolving the disputes with their neighbour. Delays which occurred to the claims would therefore cause them distress, and then they were inconvenienced by feeling it was necessary to chase Amtrust for updates having not heard anything, given their desire to move matters forward.

If the claims had been handled as they should have been, this could have been avoided. This is why I consider Amtrust should pay £100 compensation to Mr and Mrs B.

My final decision

It's my final decision to uphold this complaint in part. In order to put things right, Amtrust Europe Limited must pay Mr and Mrs B £100 compensation.

Amtrust Europe Limited must pay this amount within 28 days of us telling it that Mr and Mrs B accept my decision. If it does not, it must pay simple interest at a rate of 8% per year on this amount from that date until the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs B to accept or reject my decision before 7 July 2022.

Ben Williams
Ombudsman