

## **The complaint**

Ms R complains about how Amtrust Europe Limited has dealt with a claim she made on a legal expenses insurance policy.

All references to Amtrust are also intended to include the actions of its agents/claims handlers.

## **What happened**

What follows is intended to be a summary of the background behind Ms R's complaint. It isn't intended to be a detailed timeline of events and therefore does not include every event that has happened.

Ms R has a legal expenses insurance policy included with her home insurance policy. The house next door to her own was demolished and a planning application was made to build a block of flats in its place. Ms R is unhappy the policy hasn't provided support to her, either in identifying and enforcing the restrictive covenants applying to the land or, in pursuing a case of nuisance or trespass against the owner of the land.

Ms R has explained she has tried to sell her property, but buyers have pulled out due to the proposed development. The plot has now been put on the market without any construction taking place and Ms R would like some reassurance about possible legal courses of action depending on what could happen with the site/any development in the future. She made a complaint to Amtrust about the way in which the claim has been handed.

Amtrust considered Ms R's complaint but explained why its decision on the claim had not changed. It said the policy does not provide cover for planning matters or planning law, which covenants would fall under. It also said as no building work had commenced, no nuisance had occurred and as such no cover was available under the policy to assist Ms R. It did however recognise that it had provided incorrect information to Ms R about what it would review and offered her £50 compensation.

Ms R was unhappy with Amtrust's response and brought her complaint to this service. Our investigator looked at the complaint and explained to Ms R that she thought Amtrust acted reasonably in its decline of her claim. However, she did think Ms R had been inconvenienced and said Amtrust should make a payment of £300 compensation to reflect this.

Amtrust agreed with the investigator's opinion, but Ms R did not. In asking for an ombudsman to review the complaint she reiterated the impact the whole matter had on her and why she believes the policy should provide assistance to her.

The case has been passed to me to decide.

## **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 understand Ms R has strong views about what has happened. I want to assure her I've read and considered carefully everything she's said. However, my findings focus on what I consider to be the central issues, and not all the points raised. This isn't meant as a discourtesy. But the purpose of my decision isn't to address every single point the parties have raised or to answer every question asked. My role is to consider the evidence presented by Ms R, and by Amtrust, to reach what I think is a fair and reasonable decision based on the facts of the case.

All insurers will set out the circumstances under which they are prepared to provide cover and to what extent that cover is to be provided. I've considered the claim applications that Ms R made, and I'm satisfied no cover would have been provided under the policy.

The policy does provide cover for costs to pursue legal action for nuisance or trespass where legal rights are infringed in relation to a policyholder's home. However, the policy also sets out exclusions to that cover. One such exclusion is in relation to claims directly or indirectly arising from planning law. I'm satisfied the claim Ms R wished to make in respect of enforcing the restrictive covenants relating to the plot next door, would fall under this exclusion. So, I don't think Amtrust acted incorrectly here by letting Ms R know the policy wouldn't be able to assist with the action she wished to take to prevent the development.

I understand separately Ms R sought legal guidance and advice about the existence of covenants and potential to enforce them. And she believes that she was possibly misadvised into taking a certain course of action which may have impacted how she could claim under this policy. However, as the investigator before me has explained, this isn't something I can consider here. My focus is on the actions of Amtrust in its handling of the claims.

Amtrust later assessed the information Ms R provided in respect of how she believed the owner of the land/the proposed development was causing nuisance and trespass. And specifically, that she was unable to sell her home as prospective buyers were withdrawing once they learnt of the full details of the proposed development. Amtrust concluded, based on its experience of handling such claims, and the policy terms and conditions, that the circumstances as presented, wouldn't amount to an insured event that would cause the policy to engage. It did set out that should construction start then Ms R should let it know, and the matter could be reconsidered. I don't think Amtrust was unreasonable in its assessment of the matter, and it left it open for Ms R to pursue at a later date.

I understand Ms R is unhappy Amtrust didn't refer the matter to panel solicitors for assessment and said she'd been told verbally by a solicitor that her claim would have prospects of success. Legal expenses policies will only provide cover for legal assessments once the policy requirement for cover has been met, so I don't think Amtrust acted unreasonably in declining this request. While I appreciate Ms R provided her solicitors details to Amtrust it would have been for her to arrange for the solicitor to provide its assessment direct to Amtrust, not for Amtrust to seek out that information.

In reviewing the history of the claim, I think there were opportunities where Amtrust could have handled the claims better. For instance, I don't think it was reasonable for it to suggest initially that the second claim would be declined as it stemmed from a series of events (demolition of the old property) which happened prior to the policy being taken out. The second claim was for an action separate to that. And there was a delay in communicating this decision to Ms R. I'm pleased however that it did recognise that it provided incorrect information to Ms R in a telephone call where it suggested it would review a claim for nuisance.

Overall, while I think that Amtrust has correctly and fairly declined Ms R's claims in line with the terms and conditions of the policy, I do think it made some errors which would have added to the distress and inconvenience Ms R was already experiencing. For that I think it should pay her £300 compensation.

I appreciate Ms R wants reassurance about what action she maybe able to take in the future depending on what happens with the land and any potential development by new owners. And she would like me to direct Amtrust to provide assistance with this. However, this isn't something I am able to do. As I've mentioned above the policy sets out the circumstances in which cover and assistance will be provided, it wouldn't be reasonable for me to ask Amtrust to provide advice on hypothetical scenarios. Should matters change in the future then Ms R would be entitled to approach Amtrust again to see if any cover can be provided under the policy.

### **My final decision**

My final decision is that I uphold Ms R's complaint against Amtrust Europe Limited. I direct it to pay her £300 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms R to accept or reject my decision before 11 April 2024.

Alison Gore  
**Ombudsman**