

The complaint

Mr M is complaining about the amount Amtrust Europe Limited has paid to settle a claim he made on his caravan insurance policy.

What happened

In October 2019 Mr M bought a new caravan paying around £23,000 for it. In August 2022 Mr M took out an insurance policy provided by Amtrust to insure the caravan. He took the policy out through a broker.

In October 2022 the caravan was stolen, so Mr M contacted Amtrust to claim for the loss against his insurance policy. Amtrust investigated the claim and ultimately agreed to settle it. But it said Mr M was underinsured. It said he'd only asked for a Sums Insured of £20,000, despite paying £23,000 for the caravan a few years beforehand. And it thought it would cost around £24,999 to replace it. It said, if Mr M had declared a Sums Insured of £23,000 it would have charged a higher premium. It thought Mr M had paid 91% of the premium payable. So it said it would pay 91% of the Sums Insured – i.e. around £18,200 – less his excess of £250.

Mr M thought this was unfair, so he referred his complaint to this Service. After doing so, Amtrust acknowledged it was unfair to pay a proportion of the Sums Insured and agreed to pay the Sums Insured of £20,000.

I issued a provisional decision upholding this complaint and I said the following:

"Firstly, I need to set out that I'm only considering Amtrust's actions here as the insurer. Mr M took the policy out through a broker so he would need to raise any concerns he may have that the policy was mis-sold with the broker."

The terms of the policy specify the following:

"New For Old Cover

If You [Mr M] suffer a total loss and the Caravan is within five years of age from the date of manufacture and You have been the only owner, We [Amtrust] may replace the Caravan with a new Caravan of the same make and model. Your chosen Sums Insured (as shown in the Schedule) must cover the cost of a new Caravan of the same make and model. You must be able to provide proof of purchase."

Mr M bought the caravan as new in October 2019, so it was only around three years old when it was stolen. So I think, under the terms of the insurance policy, Mr M was entitled to "New For Old Cover". However, Amtrust has said this would be a claim value of around £25,000, but the broker put forward a Sums Insured to Amtrust of £20,000. So Mr M was underinsured. Amtrust initially said this meant that the policy only required it to pay a proportion of the Sums Insured based on the percentage of premium Mr M had paid. It later said to this Service it would pay the Sums Insured as it believed this was the extent of its liability. But I don't think either of these are right.

The terms of the policy deal with the scenario where the Sums Insured is less than the claim value and they say:

The Sums Insured

If the sums insured on the Caravan and Contents at the time of loss or damage are less than the cost of replacement You will have to pay a rateable share of the claim accordingly. This means that We need only pay X percentage of what We otherwise would have been under an obligation to pay under the terms of the insurance:

$$X = \frac{\text{Premium Actually Charged}}{\text{Higher Premium}} \times 100$$

Crucially I haven't seen anywhere that the policy sets out that Amtrust's liability was capped at the Sums Insured. Instead, it seems that, where the Sums Insured is below Amtrust's contractual liability, Amtrust will settle the claim on a proportional basis based on the above formula. While I don't think this will always be fair, I think in the very specific circumstances of this complaint, I think it's a fair way to settle this claim.

Putting things right

I think the broker, on Mr M's behalf should have set out a Sums Insured of £24,999 – the amount Amtrust has said it would cost to replace the caravan. So, I think Amtrust should work out what premium it would have charged for a Sums Insured of £24,999 – the amount Amtrust has said it would cost to replace the caravan – to calculate 'X' set out in the above formula. It should then pay X% of £24,999 to settle the claim. And it should pay any uplift to Mr M directly if it's already paid the initial settlement.

I think Mr M is out of pocket as a result of the way Amtrust has handled this claim. So I think Amtrust should pay 8% simple interest on anything extra payable to Mr M from what I've said above. And it should pay this from 19 May 2023 – the date it first offered the settlement – until it pays the additional settlement. If Amtrust thinks that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr M how much it's taken off. It should also give him a tax deduction certificate if he asks for one, so he can reclaim the tax if appropriate."

Both parties responded to accept my provisional decision.

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.

As neither party has given me anything more to think about I see no reason to reach a different conclusion to the one I reached in my provisional decision. So I uphold this complaint for the reasons I set out in the provisional decision.

My final decision

For the reasons I've set out above, it's my final decision that I uphold this complaint and I require Amtrust Europe Limited to do the following to put things right:

1. Amtrust should work out what premium it would have charged for a Sums Insured of £24,999 – the amount Amtrust has said it would cost to replace the caravan – to

- calculate 'X' set out in the above formula. It should then pay X% of £24,999 to settle the claim. And it should pay any uplift to Mr M directly if it's already paid the initial settlement.
2. Amtrust should pay 8% simple interest on anything extra payable to Mr M from what I've said above. And it should pay this from 19 May 2023 – the date it first offered the settlement – until it pays the additional settlement. If Amtrust thinks that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr M how much it's taken off. It should also give him a tax deduction certificate if he asks for one, so he can reclaim the tax if appropriate.

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

Guy Mitchell

Ombudsman