

## The complaint

Mr W's complaint is about Amtrust Europe Limited's rejection of a claim made under the legal expenses section of his home insurance.

Amtrust is the underwriter of the legal expenses cover, *i.e.* the insurer. Part of this complaint concerns the actions of the agents it uses to deal with claims and complaints on its behalf. As Amtrust has accepted it is accountable for the actions of the agent, in my decision, any reference to Amtrust includes the actions of the agents.

## What happened

In mid-2023, Mr W contacted the legal helpline provided with his policy regarding an issue with his neighbour trespassing on his property. Mr W was advised to send a warning letter to his neighbour and that if that was not successful, Amtrust would look into it further and see if it could assist. The letter was not successful in stopping his neighbour from committing further trespass, so Mr W submitted a claim for cover to take legal action against the neighbour.

Amtrust considered the claim but said the issues with the neighbour had been going on for some time, as Mr W had confirmed he had complained to the neighbour about trespassing on his property in 2021, which was before the policy started in November 2022. And Mr W had also complained around three years earlier that his neighbour had let off fireworks dangerously near a large tree and the debris from the fireworks (paper discs) fell on his drive and balcony. Amtrust says this also amounted to trespass. Amtrust says the policy excludes cover for events that first occur before the start of the insurance cover.

Mr W does not accept this. He says that each incidence of trespass should be considered a separate event, as there is no way of predicting any future trespasses; and the fireworks incident was not trespass and is irrelevant. But in any case, Mr W says he was not told by the helpline that any previous incidences of trespass would affect the claim. One adviser said he could make a claim if he issued a final warning to his neighbour and it would see what it could do if that failed and another adviser said the claim was unlikely to be successful because there was no property damage.

Mr W says he was given poor support from the helpline, which is unacceptable; he questions why they wasted his time making him write to his neighbour and asking him to call back if the claim is not covered. Mr W also says there were delays on Amtrust's part. On one occasion, he was told he'd be called back by the helpline the same day but did not get a call until the next day; and Amtrust was also slow to respond to his complaint and provided a poor service.

Mr W is also unhappy that the home insurer has not dealt with this claim and complaint. He says it is the home insurer that he entered a contract with and it should be taking responsibility for the poor service he has received.

Amtrust says that the legal advice helpline is intended to provide general legal advice and the advisers cannot comment on whether a claim is covered under the policy. It was

discussed with Mr W that there was no damage to his property and there might be other options (such as involving the police or the local authority) and that this might mean there is no cover under the policy. Amtrust does not accept that this was unreasonable. It also maintained its position in regard to the claim not being covered.

One of our Investigators looked into the matter. She did not recommend the complaint be upheld, as she was satisfied that Amtrust was entitled to treat the previous incidents of trespass by Mr W's neighbour as part of a series of events that could potentially lead to a claim. The Investigator also did not consider there were any avoidable delays on Amtrust's part, as it had given its decision on the claim around five days after it was submitted. Its response to Mr W's complaint had been provided just over the eight week period it has for responding but this was not significant.

Mr W does not accept the Investigator's assessment, so the matter has been referred to me.

### Preliminary matter

The home insurer branded and packaged the legal cover with the home insurance. The legal expenses cover is an optional add-on. But the legal cover is underwritten by Amtrust (who in turn use specialist agents to deal with claims and complaints on its behalf) not the insurer that underwrites the buildings and contents insurance. This is not an unusual arrangement and not something we consider unfair. I am therefore satisfied that Amtrust is the correct respondent to this complaint.

### **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.

Mr W's policy provides cover for various events that might require legal assistance. This includes trespass. The relevant section of the policy says:

*“Property protection*

*What is insured*

*Advisors' costs to pursue a legal action for nuisance or trespass against the person or organisation infringing your legal rights in relation to your main home...”*

However, the policy also excludes claims about issues that arise before the start of the policy. The general exclusions that apply to the whole policy say:

*“Personal Legal Protection*

*1. There is no cover where:*

*The insured incident began to start or had started before you bought this insurance. You should have known when buying this insurance that the circumstances leading to a claim under this insurance already existed.*

An “insured incident” is defined as being:

*“Insured incident - The incident or the first of a series of incidents which may lead to a claim under this insurance. Only one insured incident shall be deemed to have arisen from all causes of action, incidents or events that are related by*

*cause or by time.*”

When making the claim, Mr W told Assurant that in July 2023 the neighbour rolled a ball onto his property and in August 2023 he entered to retrieve it and the neighbour had also been abusive to him.

The claim form also detailed that the neighbour had “*for several years*” trespassed on Mr W’s property in order to access and leave their property and that Mr W had previously asked him to stop around two years earlier. Mr W also said he’d put a “*no access*” sign up to try and prevent the continuing trespass. The file shows Mr W also complained about his neighbour lighting fireworks around three years prior to the claim to Amtrust (so around mid-2020).

Mr W says that each incident should be treated separately and the previous incidents described above do not fall within the policy definition of an “*insured incident*” above and therefore this claim does fall within cover. I do not agree. I will explain why.

The policy defines an “*insured incident*” as including the first of a series of incidents related “*by cause or by time*” which may lead to a claim under the policy.

Amtrust says the firework incident where debris went on Mr W’s property amounts to trespass and that would be considered the start of the insured incident. But even if that is not correct, Mr W has said the neighbour regularly trespassed for several years to access and leave their property and he had asked the neighbour to stop doing so around two years before the claim as made, so around mid-2021, and therefore before the policy started in November 2022.

Mr W would have had a cause of action in relation to any of these events and they therefore may have led to a claim under the insurance. I am also satisfied that they are related by cause as they were acts of trespass on Mr W’s property by the same neighbour.

The relevant date, for the purposes of the policy terms, is not the date at which all attempts at an amicable resolution have failed and the claimant realises that the other side will not concede. It is the date from which the first in a series of events which “*may lead*” to a claim occurs. As Mr W was aware of acts of trespass before the policy started, I consider Amtrust was acting in line with the policy terms and was not acting unfairly when refusing the claim.

Mr W also says he was given poor service by the helpline and they wasted his time suggesting he write to his neighbour and that he would have a claim under the policy.

The helpline is available to give general advice about various matters. Mr W was advised to write to the neighbour and I have not seen any persuasive evidence that this was unreasonable advice.

Mr W was told if the letter did not work then Amtrust could consider the claim. Again, I do not think this was unreasonable. Mr W considers it was a waste of his time but the helpline staff could not pre-determine the outcome of any claim under the policy. Just because the claim was not covered does not mean this was unreasonable.

Mr W also says there were delays by Amtrust, in particular in responding to his complaint. Complaint-handling is not a regulated activity in its own right, so I cannot consider Amtrust’s handling of Mr W’s complaint.

I have not seen any evidence of any avoidable or unreasonable delays in the handling of the claim. As the Investigator said, Amtrust gave Mr W a claim decision within five days of the

claim being submitted. I think this was reasonable.

Mr W also says there was a delay in a call back from the helpline. While I can understand it would have been frustrating to expect a call back which does not happen, it appears he was called the next day. I have not seen any evidence that this caused any impact on the claim. Sometimes things go wrong and there is no automatic right to compensation. So while frustrating, I do not consider that any award, or other action, is warranted for this.

### **My final decision**

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 30 September 2024.

Harriet McCarthy  
**Ombudsman**