

## **complaint**

Mr W complains that Amtrust Europe Limited did not meet a claim he made under his Motorist Legal Expenses and Replacement Vehicle Charges insurance policy.

## **Background**

Mr W was involved in a road traffic accident in late November 2007. Two days later he arranged to use an accident management company (rather than his motor insurer) to handle his claim for damage to his vehicle, and entered a credit hire agreement with that company, which provided him with a hire car.

At that time, Mr W was also provided with a motor legal expenses insurance policy underwritten by Amtrust. The policy provided cover for legal costs and expenses incurred in respect of certain claims. This included claims for costs incurred in connection with the provision of credit services (including vehicle hire charges) by the accident management company, and any costs which the insured is required to pay by a court.

Mr W's motor insurer has said that in May 2008, Mr W reported the incident to it and advised he would now be making a claim under his motor insurance policy. He was making that claim because the accident management company had not been able to obtain an admission of liability from the third party insurer. That meant that Mr W had not been able to have the cost of repairing his vehicle covered by that means. It also meant that he could not recover the costs of his hire car. Mr W's vehicle was then repaired and paid for under the motor insurance policy.

However, the accident management company was pursuing Mr W for repayment of the hire charges incurred. He received a summons in respect of court proceedings for unrecovered costs under its credit hire and repair agreement with him.

Mr W made a claim under his legal expenses policy. Amtrust investigated and instructed solicitors to act in pursuing the third party insurer in order to recover the costs from it. The third party insurer continued to dispute liability. Preparations were made for the matter to proceed to litigation, however Amtrust advised that it was thrown out of court because of problems with the evidence, some of which was provided late, and some not provided, despite requests made to Mr W.

Following further efforts by Amtrust to obtain information from Mr W for the purposes of the claim (which it says were unsuccessful), it decided to withdraw indemnity under the legal expenses policy. This was on the basis that Mr W had not co-operated in the attempt to recover the costs from the third party insurer.

Mr W was unhappy with that and he brought his complaint to this service. Our adjudicator did not recommend that the complaint be upheld. He was satisfied on the evidence that Amtrust was entitled to take the action it did, since Mr W had breached a condition of the policy in not co-operating. Mr W did not agree and the matter has been referred to me to decide.

## **my findings**

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

The policy includes a condition that the insured must co-operate with Amtrust/its authorised claims agents at all times and provide without delay communications and information in connection with the insured incident.

There is also a specific exclusion – clearly identified in the policy keyfacts document as a ‘Significant exclusion’ – which states that cover is not provided where the insured *‘fails to co-operate in pursuing any claim or proceedings to recover [the specified accident management company’s] replacement vehicle hire costs....on [the Insured’s] behalf’*.

In this case Amtrust says Mr W indicated that he was not willing to co-operate in relation to the claim to recover the hire charges. It has provided detailed notes of the steps taken in pursuing the claim to court (and subsequently), and its dealings with Mr W with regard to obtaining necessary information from him to be used as evidence.

I have seen no response from Mr W which I consider satisfactorily explains or specifically and convincingly refutes the points made by Amtrust about his apparent lack of co-operation. I am satisfied, on the information that is available, that Amtrust’s ability to appropriately pursue the claim on Mr W’s behalf was, more likely than not, seriously hampered by the fact that relevant evidence was not provided by him when requested. This means its position was prejudiced by the breach of the policy condition.

I therefore do not consider that Amtrust has acted unfairly or unreasonably in taking the action it did in not pursuing the claim further.

Mr W, through his representative, has also expressed concerns about the actions of the solicitors instructed to pursue his claim. If he wishes to take that further, he may wish to contact the Legal Ombudsman.

### **my final decision**

For the reasons above, it is my final decision that I do not uphold this complaint. I make no award against Amtrust Europe Limited.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr W to accept or reject my decision before 9 February 2015.

Helen Moye  
**ombudsman**