

The complaint

Mr H complains that AmTrust Europe Limited withdrew cover and cancelled his travel insurance policy.

What happened

In 2019, Mr H took out a travel insurance policy through a broker. The policy was intended to provide cover for a specialist sporting event. Mr H chose not to include cancellation cover.

As a result of the Covid-19 pandemic, the specialist event was postponed. As the policy was specific to the event, cover was extended until September 2022.

However, in October 2021, Mr H was diagnosed with a blood clot and prescribed medication. He told AmTrust about this diagnosis. AmTrust considered that Mr H's new diagnosis, taken together with other co-morbidities, was a material change in the risk of Mr H needing to make a claim on the policy. It thought this level of risk was now too high and it told Mr H it was no longer prepared to insure him. Mr H was refunded the premium he'd paid for the policy, although he's now told us that he didn't cash this.

Mr H was unhappy with AmTrust's decision. He said his treating consultant had agreed that he could discontinue with blood thinners. And he considered he'd been in the same overall health that he'd been in when he'd taken out the policy. AmTrust maintained its position.

So Mr H asked us to look into his complaint. While the event organiser had told Mr H he could still take part in the event if he could find alternative insurance, he hadn't been able to do so. This meant Mr H hadn't been able to compete in the event and had lost a significant amount of money.

Ultimately, our investigator didn't think that Mr H's complaint should be upheld. She noted that the policy contained a term which required policyholders to tell AmTrust if there'd been a change in their health after the policy had been issued. She noted too that this term made it clear that AmTrust could change the terms of the insurance policy if it was notified of such a change. In this case, Mr H had told AmTrust about a change in his health during the life of the policy. And AmTrust had provided evidence from an underwriter that it was no longer prepared to insure Mr H, given the diagnosis he'd received in October 2021.

In this particular case, Mr H hadn't taken out cancellation cover. He'd told us that he didn't think it was needed, given the proximity of taking out the policy to the sporting event. It had been the pandemic which had delayed the event. So the investigator didn't think it would be

fair or reasonable to ask AmTrust to cover the cancellation fees Mr H incurred as a result of not being able to participate in the event.

I issued a provisional decision on 26 January 2023. In my provisional decision, I explained the reasons why I didn't think AmTrust had treated Mr H fairly. I said:

'The relevant regulator's rules say that insurers must handle claims promptly and fairly. And

that they mustn't turn down claims unreasonably. So I've considered, amongst other things, the terms of Mr H's policy and the circumstances of his claim, to decide whether AmTrust treated him fairly.

I've first considered the terms and conditions of Mr H's policy, as these form the basis of his contract with AmTrust. It's common ground that the policy was issued in 2019, ahead of the global pandemic. In July 2021, following the postponement of the sporting event as a result of Covid-19, AmTrust agreed to extend the policy cover until September 2022. It seems to me that AmTrust agreed to extend the existing policy on the same terms upon which it had initially offered cover. No new contract was entered into at this point – and indeed, there's no indication that new terms were included or agreed. This means I think AmTrust was reasonably entitled to rely on its existing policy wording when dealing with Mr H's policy.

Pages five and six of the contract set out 'Health Conditions' which apply to the policy. One of these says:

'If there are changes in health that affect a previously declared medical condition or additional medical conditions which have occurred before the start of the (event) and after the policy has been issued, you must contact (event organiser) immediately to advise of any changes in health. We have the right to change the terms of your policy in line with the change in risk.'

The policy also includes a number of General Policy Conditions. On page 21, the policy sets out the following condition:

'Tell us about a Change

You must tell us as soon as possible about any change in the information you have given us which is relevant to this insurance, for example, if there is any change in the information you gave us when the insurance started, particularly in relation to a health condition. If you do not tell us, your insurance may not be valid or may not cover you fully. If you are not sure whether any information is relevant, you should tell us anyway. We have the right to change any conditions of this insurance when you tell us about a change.'

In my view, AmTrust has made it clear that if a policyholder suffers a change in their health during the life of the policy, they must let AmTrust know about it. And I think the policy makes it sufficiently clear that in some cases, such a change in health might lead to AmTrust changing the terms of the insurance contract.

I've seen a copy of an email Mr H sent to his broker in March 2022. He told the broker that he'd suffered a blood clot in October 2021 and had been prescribed blood-thinning medication, although I understand his consultant later decided against prescribing blood-thinners on an ongoing basis. AmTrust considered the diagnosis of a blood clot – especially taking into account Mr H's age and co-morbidities – to be a significant and material change in the risk it had agreed to cover. Bearing in mind the nature of the event and the fact that Mr H would be some distance from medical facilities, I don't think this was an unreasonable position for AmTrust to take. And it's clear that Mr H's diagnosis with a blood clot in 2021

was a new condition which developed around two years after AmTrust had agreed to offer him cover. Under the terms of the contract then, I think AmTrust was entitled to assess whether it was still prepared to insure Mr H.

AmTrust has provided us with evidence from its underwriters showing that following Mr H's change in health, it was no longer prepared to accept the risk of insuring him. This was based on an assessment of Mr H's overall health, age and the nature of the sporting event.

I'm satisfied that AmTrust would've treated any other policyholder in Mr H's circumstances in the same way. So I don't think it unfairly singled him out. As such, I find it was reasonable for AmTrust to withdraw insurance cover for Mr H.

As AmTrust was no longer prepared to insure Mr H, it appears it sent him a full refund of his premium – by cheque or credit note. So I now need to consider whether I think this was a fair and reasonable response from AmTrust. And I don't think it was, for reasons I'll go on to explore.

It's clear that Mr H took out this policy specifically to cover the specialist sporting event. Indeed, the policy terms make it clear that the policy was intended to insure participants in this particular event, as it was branded with the organiser's name and the name of the event. So AmTrust had agreed to cover the risk of Mr H taking part in this specific event and during the course of it.

But following the change in Mr H's health, AmTrust was no longer prepared to insure the risk of him taking part in the event. While, as I've set out above, it was entitled to make this decision, it needed to ensure that Mr H was treated fairly. By Mr H's account, he was unable to take part in the event without holding specific insurance. And it seems Mr H was unable to source replacement cover from other insurers following AmTrust's decision to withdraw the cover it had agreed in 2019, over two years before. This meant that Mr H was effectively prevented from taking part in the sporting event because of AmTrust's decision to no longer insure him.

Generally, if an insurer decides to withdraw cover during the life of a policy, I take the view that it's fair and reasonable for that insurer to cover the cost of holiday cancellation at the time cover was withdrawn. I appreciate Mr H didn't hold cancellation cover. But I don't think that's relevant to the outcome here. By withdrawing insurance cover, AmTrust left Mr H in a position where he could no longer partake in the specialist event he'd previously been insured for. And it also left Mr H significantly out of pocket for an event he couldn't take part in for reasons beyond his control. I'm not persuaded that a simple premium refund here leads to a fair outcome.

Instead, I consider that a fair and reasonable outcome to this complaint would be for AmTrust to pay Mr H the costs of cancelling the event, which would've applied at the time AmTrust withdrew his cover. I also consider that it should add interest to the settlement at an annual rate of 8% simple from the point cover was withdrawn until the point of settlement.

I'm aware Mr H was sent a premium refund by cheque or credit note. It isn't clear if this has been cashed. If the refund has been cashed, AmTrust will be entitled to deduct the policy premium from any settlement it pays. If it hasn't, then AmTrust shouldn't make such a deduction.'

I asked both parties to send me any further evidence or comments they wanted me to consider. I've summarised each party's response below.

Mr H's response

Mr H said that as no new contract was entered into, when the contract extension was agreed, the extended risks to AmTrust were carried over until the completion of the race and were collaterally included in the original contract. He said that AmTrust has built a reputation on speciality risks. It was not fair or reasonable to accept higher premiums for a specific risk over many years, particularly when most crew members had been party to the contract due to its specific nature.

Mr H hadn't cashed the premium refund cheques he'd been given, as he didn't think it was fair or reasonable for AmTrust to simply refund the premium in this case.

AmTrust's response

The policy made it clear that policyholders were required to notify AmTrust of a change in risk. Mr H had been forthcoming in disclosing his change in health during the life of the policy. If AmTrust determined that this change in risk meant that the risk was no longer coverable, it was entitled to cancel the policy and refund the premium.

AmTrust pointed out that in this case, Mr H hadn't made a claim and so it hadn't turned down a claim unreasonably. It agreed with my findings that it had acted in line with the policy terms when it withdrew cover.

However, it felt that my overall conclusions had been compared with how I would treat a simple holiday cancellation case, but this was a very different type of risk. The event wasn't a holiday – it was a competitive, physically demanding event and it didn't think it was appropriate to treat this event and a holiday in the same context. The implications if Mr H had taken part in the event and suffered health issues while doing so, were very different to if he'd suffered health issues poolside. So it felt the associated risks were not comparable.

AmTrust agreed it was unfortunate that Mr H had been left out of pocket. But it maintained that Mr H had chosen not to add cancellation cover to his policy. And therefore it stated that it shouldn't be required to pay cancellation fees when this risk was categorically not covered by the policy Mr H took out. It didn't agree that my proposed redress was fair and reasonable to both parties. It considered I was, in effect, directing it to pay an ex-gratia award equivalent to the event fees, plus interest. But at no point had AmTrust insured the event or the fees. Instead, it suggested that Mr H should contact the race organiser.

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.

Having done so, while I've carefully considered the further submissions of both parties, I still don't think that AmTrust has treated Mr H fairly and I'll explain why.

The regulator's principles for business require financial businesses to pay due respect to the needs of their customers and to treat them fairly. So I've taken this principle into account when deciding whether AmTrust has acted in a fair and reasonable way, amongst other relevant considerations such as the law, the contract terms and good industry practice.

As I set out in my provisional decision, it's clear that the terms of the contract Mr H and AmTrust agreed to in 2019 require policyholders to tell AmTrust about a change in their health after the contract has begun. Mr H seems to have been aware of this requirement and seems to have considered the DVT he suffered significant enough to bring it to his broker's attention. Under the terms of the contract, I accept too that following such a change in risk, AmTrust was entitled to determine whether or not it was still prepared to insure Mr H, and if so, on what terms. Accordingly, under the contract, it remains the case that AmTrust was entitled to withdraw cover and refund Mr H's premium.

But I'm not bound to make a decision based on contractual terms alone. I am required to decide what I think is fair and reasonable in all of the circumstances. I can depart from a strict interpretation of the terms of an insurance policy, if I conclude that their application produces an unfair result. I still find that, in this case, a simple refund of Mr H's premium

following the withdrawal of cover (which is in line with a strict interpretation of the terms), produces neither a fair nor reasonable result.

There's no dispute that the event Mr H was due to take part in was competitive, physically challenging and specialist in nature. There were clearly different risks associated with this particular event than the risks posed, for example, by a sunshine break. I've borne that in mind. But I don't think such considerations outweigh the fact that, as a result of AmTrust's decision, Mr H was unable to take part in the event he'd booked and paid for. There's no medical evidence that he was physically not fit to take part in the event, nor that he was advised against doing so. There's no indication that Mr H no longer wanted to participate in the event. It seems to me that the only reason Mr H wasn't able to compete, and therefore incurred cancellation costs, was because of AmTrust's withdrawal of cover. I say that because Mr H required insurance in order to take part in the event. He'd purchased this specific policy to allow him to do so and once cover had been withdrawn, he was no longer able to take part, for reasons outside of his control. He simply had no option to travel without cover in place, which AmTrust had withdrawn.

AmTrust may have been *contractually* entitled to withdraw cover. But it doesn't seem fair or reasonable for the losses which flowed from this decision, during the life of a contract both parties entered into in good faith, to rest with Mr H, to his detriment.

As such, I don't think it would be fair and reasonable to find that a simple premium refund is fair in these particular circumstances. It remains the case that, generally, where an insurer has decided to withdraw cover during the life of the policy, I think it's fair and reasonable for that insurer to cover the cancellation costs a policyholder will incur at that point. This is in line with what we generally consider to be good industry practice and our general approach to cases of this nature. I'm not persuaded that the type of 'holiday' which was being insured here means that it's fair for me to distinguish this case from the way I may decide a complaint about a more conventional trip. I don't think it would be fair for Mr H to be disadvantaged by a departure from an approach my colleagues and I may often apply, simply because he'd booked a non-standard type of trip.

AmTrust has placed some weight on the acknowledged fact that Mr H didn't choose to add cancellation cover to his policy. I mentioned in my provisional decision that I didn't think that fact was relevant to a fair outcome here. To expand on that, I've looked at the cancellation cover Mr H would've had if he'd paid the additional premium. The listed, insured events AmTrust has chosen to insure under the cancellation/curtailment section of the policy simply don't include cover in the event that AmTrust decides to withdraw insurance cover following a change in risk. And based on the circumstances that led to Mr H needing to cancel his participation in the event, I don't think any claim would've been covered under the cancellation section of the contract. So even if Mr H had paid an additional premium for the cancellation add-on, it seems it would have made no material difference to his ability to claim.

Overall, I accept that AmTrust considers I'm directing it to make an ex-gratia award. I accept too that there's no insured event here, or a claim which is covered by the policy. In my view, by directing AmTrust to pay the cancellation fees which applied at the time it withdrew cover, together with interest, I am telling AmTrust to pay what I consider to be fair and reasonable compensation in the specific circumstances of this complaint. As I've explained, I find this is in line with good industry practice. And so I still find that this is a fair and reasonable outcome to Mr H's complaint.

My final decision

For the reasons I've given above and in my provisional decision, my final decision is that I

uphold this complaint.

I direct AmTrust Europe Limited to pay Mr H the event cancellation costs which would've applied at the time it decided to withdraw insurance cover. I also direct it to add interest to the settlement at an annual rate of 8% simple from the date cover was withdrawn until the date of settlement.

If Mr H has cashed-in the premium refund he's been paid, AmTrust will be entitled to deduct this amount from any settlement it pays.

If AmTrust considers that it's required by HM Revenue & Customs to take off income tax from that interest it should tell Mr H how much it has taken off. It should also give Mr H a certificate showing this if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 31 March 2023.

Lisa Barham
Ombudsman