

## **The complaint**

Ms P complains about how Amtrust Europe Limited is dealing with a claim she made under a legal expenses insurance policy.

## **What happened**

What follows is only intended to be a summary of the events that led to this complaint.

Ms P made a claim for assistance with legal costs in pursuing an employment matter. Amtrust asked a firm of its panel of solicitors to provide an assessment on Ms P's chances of being successful in her proposed action. It is a requirement of the policy that such action has more than a 50% chance of success.

The panel solicitor didn't think Ms P's action had prospects of success (i.e., 50% or less) so Amtrust declined the claim. Ms P provided additional information and further assessments were provided. However overall, the panel solicitor remained of the opinion the action would unlikely be successful.

Ms P obtained an assessment from a solicitor of her choice which said they thought the proposed action did have prospects of success. As there was a conflict of opinion, a barrister was instructed to provide an assessment. They thought that some of the heads of claim Ms P wanted to pursue did have prospects, but others didn't.

Amtrust accepted Ms P's claim and agreed rates with her chosen solicitors. However, it said it would only backdate costs to the date the positive barrister's assessment was provided as this was the date cover was confirmed.

Ms P complained about this. She said her solicitors had previously advised her claim did have prospects and the barristers' assessments simply served to confirm this. Therefore, she thought costs should be backdated to the date the positive solicitor's opinion was provided. She confirmed action was ongoing during that time and she incurred costs in relation to preparing for it and attending hearings. Amtrust did not change its position, so Ms P brought her complaint to this service.

## **My provisional findings**

I issued my provisional findings on 21 April 2023. I said I intended to uphold the complaint for the following reasons:

*"The policy terms say cover will be provided where a policyholder has more than 50% chance of winning the case and achieving a positive outcome. There is nothing in the policy which says what will happen if there is a conflict of opinion between solicitors or what that may subsequently mean for the date cover operates from.*

*I think Amtrust acted reasonably here by asking for an opinion of a barrister. It is what this Service would usually suggest in circumstances such as this. However, I disagree in this case that the date of cover should only be backdated to the date that assessment was*

*provided.*

*Ms P previously provided a positive assessment from her solicitor which confirmed they thought the claim had more than 50% chance of success. As Ms P has pointed out, the barrister's opinion served to endorse that opinion.*

*Given the nature of the claim Ms P was pursuing and that action was taking place whilst the matter of policy cover was being resolved, I think it would be fair and reasonable to backdate cover to the point the solicitors provided the initial positive legal assessment.*

*As such I intend to uphold Ms P's complaint and direct that Amtrust backdate cover to the point Ms P provided the positive legal assessment from her instructed solicitors. While I accept, technically Amtrust did not authorise the costs incurred during this time, given the underlying legal claim is covered as an insured event, I think Amtrust should cover any reasonable and necessary costs that were incurred in progressing the legal claim during that time."*

### **Responses to my provisional findings**

Amtrust responded saying it accepted my findings and would agree to backdate the cover to the date the positive solicitor's assessment was received, 12 October 2021. It said it would need details of costs from Ms P to ensure they are proportionate before they can be fully authorised.

Ms P responded saying that she accepted my findings. But pointed out, had Amtrust agreed for her to use her own solicitors earlier then the positive assessment could also have been given even earlier.

### **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.

The policy terms for prospects of success would always needed to have been met first before Ms P's freedom to choose a solicitor could have been considered.

Ms P has said that had Amtrust agreed to change solicitor earlier, then the positive assessment could have been given earlier. However, during the time period Ms P is referring to, the panel solicitor had concluded Ms P's case didn't have prospects of success and therefore there was no cover for Ms P's claim.

While Ms P disagreed with the solicitor's assessment it would always have been for her to arrange for an opinion to be sought from a different solicitor and presented to Amtrust – something which she later went on to do. So, I don't agree that Amtrust acted incorrectly here, and I remain of the opinion that cover should be backdated to the point Ms P presented a positive solicitor's assessment to Amtrust. And Amtrust is entitled to undertake any usual checks on the costs that have been incurred to ensure they are in line with the policy terms.

For the reasons above, and those set out in my provisional decision. I uphold this complaint.

### **Putting things right**

Amtrust should backdate cover to the point Ms P provided the positive legal assessment from her instructed solicitors.

**My final decision**

My final decision is that I uphold Ms P's complaint against Amtrust Europe Limited. It should put things right as I have set out in the section above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms P to accept or reject my decision before 8 June 2023.

Alison Gore  
**Ombudsman**