

The complaint

Mr S complains about Amtrust Europe Limited (“AEL”) and their handling of the claim he made on his legal expenses insurance policy.

What happened

The claim and complaint circumstances are well known to both parties, so I don’t intend to list them chronologically in detail due to the informal nature of our service. But to summarise, Mr S held a legal expenses insurance through his home insurance policy, which was underwritten by AEL. In the summer of 2023, Mr S raised a claim on this policy. But he was unhappy with the way his claim was handled, so he raised a complaint.

Mr S complained about the fee for his prospects assessment being deducted from his indemnity amount and that VAT was being included in the costs incurred. He also complained about AEL’s refusal of his request to transfer his claim from AEL’s panel solicitor, who I’ll refer to as “M”, to a solicitor of his choice.

AEL responded to Mr S’ complaint and didn’t uphold it. They thought they had acted in line with the terms of Mr S policy when refusing Mr S’ request to change solicitors. And they thought they were fair to deduct the fee for the prospects assessment from his indemnity amount. So, they didn’t think they needed to do anything more. Following this response, AEL confirmed they were happy for our service to also consider Mr S’ concerns about the VAT, even though it had not been commented on directly within their response. Mr S remained unhappy with the complaint response, so he asked our service to continue with our investigation.

Our investigator looked into the complaint and upheld it in part. They didn’t think AEL were fair to deduct the prospects assessment fee from the indemnity amount and so, they recommended AEL reinstate this to the indemnity, and pay Mr S £100 for any inconvenience this caused. But our investigator thought AEL were fair to refuse Mr S’ request to change solicitor, as freedom of choice only applied at the point legal proceedings need to begin and they didn’t think this was the case at the point AEL issued their complaint response. Nor did they think AEL were unfair to include VAT in any costs included within the indemnity. So, they didn’t think AEL needed to do anything more for these complaint issues.

AEL accepted our investigators recommendation. But Mr S didn’t, providing comments and information setting out why. These included, and are not limited to, Mr S continued belief that the claim was ready for legal proceedings to begin when he initially contacted AEL. So, he felt freedom of choice applied from that point. And he reiterated why he felt VAT shouldn’t be included, providing what he felt was relevant case law.

Our investigator considered Mr S’ comments, but their position remained unchanged. And they continued to reiterate to Mr S that their investigation, and so this decision, focuses solely on the events up until the point AEL issued their complaint response. So, any changes in situation, or updates on the claim stage, after this time wouldn’t impact the outcome under this complaint reference. Mr S continued to disagree and so, the complaint has been passed to me for a 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.

Having done so, I'm upholding the complaint for broadly the same reasons as the investigator. I've focused my comments on what I think is relevant. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome.

First, I want to acknowledge Mr S' clear unhappiness with the claim process, in particular the actions and charges taken and applied by M. I recognise Mr S has been left feeling unhappy and unfairly treated during the claim process and as AEL are the underwriter of the insurance policy, I can appreciate why Mr S feels they are ultimately responsible for this.

But I want to make it clear that AEL aren't responsible for the actions of M. And this includes what M charges for the work they undertake and crucially, what actions M feel are necessary as part of the claim process. M are the legal expert in this situation and so, unless there are exceptional reasons that can be evidenced, I would expect AEL to follow the guidance of M. If Mr S is unhappy with M directly, he will need to raise this with M who will explain his referral rights and next steps if necessary.

I also want to make it clear what I've been able to consider as part of this decision. This decision focuses solely on the events and complaint issues raised before, and addressed in, AEL's final complaint response issued on 13 February 2024, as well as any issues AEL have agreed we can consider separate to this. Any events, or complaint issues, that have occurred after this date, that AEL haven't given us permission to consider, will need to be raised with AEL and then our service separately. So, they haven't impacted the decision I've reached.

I note AEL have accepted our investigator recommendation regarding the prospects assessment fee, agreeing to reinstate this amount to the indemnity amount and paying Mr S £100 compensation. As they've accepted this recommendation, I think it's reasonable for me to assume the merits of this complaint is no longer in dispute, as AEL have accepted they acted unfairly here. So, I won't be discussing the merits of this point in detail, and I will instead discuss what I think they should do to put things right later within this decision.

Instead, I've focused on what does remain in dispute, which centres around Mr S request to change solicitor, and whether VAT should be included within the costs covered by the indemnity.

I recognise Mr S feels, under freedom of choice, he should have a right to appoint his own solicitor, rather than use M. And he's set out why he thinks that's appropriate on this occasion. But crucially, the terms and conditions of the policy Mr S held states clearly that he *"is not covered for any other legal representatives fees unless it is necessary to start court proceedings or a conflict arises"*.

I think this term is reasonably clear and it falls in line with our approach that freedom of choice begins when legal proceedings need to be started, which is based on the Insurance Companies (Legal Expenses Insurance) Regulators Act 1990.

And in this situation, at the point AEL issued their complaint response, I don't think Mr S' claim was at this stage. This is because M had made it clear, in their role as legal expert,

that they felt a further expert report was required to consider proportionality, which was a different test to prospects. And from the evidence I've seen, a further expert report wasn't obtained by this time.

So, while I appreciate why Mr S feels as though legal proceedings were necessary from the point at which he contacted AEL to make a claim, I don't think I can say AEL were unfair, or unreasonable, to deem that not to be the case based on the information M were providing.

And having reviewed the claim, considering all of Mr S' comments, I don't think I can say there were any exceptional circumstances that meant Mr S should have been given freedom of choice before this point. I've not seen any evidence to suggest the case was particularly complex, nor do I think there was any conflict of interest that would've caused IM to breach their code of conduct by representing Mr S. So, because of the above, I don't think I can say AEL have acted unfairly when refusing Mr S' request to change solicitors up to the point of their complaint response.

And in terms of the VAT, I've seen nothing in the policy terms and conditions to suggest VAT would be excluded from the indemnity amount. And as legal services are not exempt from VAT, nor are they zero rated, I don't think it's unreasonable for AEL to include the VAT costs within the indemnity amount. And I want to make it clear this is standard industry approach to these costs. So, while I appreciate why Mr S disputes that and I want to reassure him I've considered all the information and evidence he's put forward, I don't think AEL need to do anything more for this aspect of the complaint.

I've then turned to what I think AEL should do to put things right regarding the prospects assessment fee.

Putting things right

When thinking about what AEL should do to put things right, any award or direction I make is intended to place Mr S back in the position he would've been in, had AEL acted fairly in the first place.

In this situation, had AEL acted fairly, I don't think they would've included the prospects assessment fee within the indemnity amount. So, to put Mr S back in the position he should've been in, this amount should be reinstated so it's available to be used.

And as AEL initially included this incorrectly, I do acknowledge Mr S has needed to engage with AEL unnecessarily to try and have this removed, which I've no doubt would've caused some distress and inconvenience. Our investigator recommended AEL pay Mr S £100 to recognise the above, which AEL have agreed to do. And having considered this recommendation, I think it's a fair one that falls in line with our services approach and what I would've directed, had it not already been put forward. So, it's one I'm directing AEL to pay.

But I must make it clear to Mr S that, while I recognise why he doesn't think this £100 reflects the delays he encountered in receiving responses during AEL's complaint process, I don't think an additional award for delays in AEL responding to his complaint are appropriate here as Mr S wasn't prevented from bringing his complaint to our service after the eight-week time period they are afforded elapsed.

And as Mr S didn't agree with AEL's complaint response, I think it's reasonable for me to assume he would always have escalated his concerns to our service. So, I don't think there has been an impact that required a compensatory payment on top of what I'm already directing AEL to pay.

My final decision

For the reasons outlined above, I uphold Mr S' complaint about Amtrust Europe Limited and I direct them to take the following action:

- Reinstatement of the prospectus assessment fee to the indemnity amount; and
- Pay Mr S a £100 compensatory payment to recognise the distress and inconvenience he was caused having to challenge the above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 9 September 2024.

Josh Haskey
Ombudsman