

The complaint

Mr C's complaint is about a claim he made on his Amtrust Europe Limited ('Amtrust') motor legal expenses insurance policy, which was declined.

Mr C says Amtrust treated him unfairly.

All references to Amtrust in this decision include their claims handlers.

What happened

Mr C made a claim on his Amtrust motor legal expenses insurance policy for cover to make a claim against a local Council for personal injury and other losses he incurred as a result of being thrown off his bike after driving into a ridge in a road.

Amtrust accepted Mr C's claim in the first instance and passed it to their panel firm of Solicitors to assess. That firm considered the merits of Mr C's claim and concluded that it didn't have reasonable prospects of success. As a consequence, Amtrust declined to cover Mr C's claim. Unhappy, Mr C complained to the Financial Ombudsman Service.

Our investigator considered Mr C's complaint and concluded it should not be upheld. Mr C does not agree so the matter has been passed to me to determine.

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 don't uphold Mr C's complaint. I'll explain why.

The starting point is the policy terms. It's a requirement of virtually all legal expenses insurance policies that any intended claim has a reasonable prospect of succeeding. Mr C's policy is no exception. That means his claim needed to have over 51% prospects of succeeding in order for Amtrust to cover it.

We don't think this is unfair. Court action can be expensive. A privately paying customer wouldn't want to bear the cost if advised it is unlikely to succeed. We wouldn't expect a legal expenses insurer to fund claims in these circumstances either.

Where an insurer has declined funding in such a case, it isn't for us to evaluate the merits of the underlying claim. Instead, and as the investigator explained, we look at whether the insurer has acted fairly. So long as they have got advice from suitably qualified lawyers, we won't generally question their reliance on that advice, unless we think it was obviously wrong or based on factual mistakes. Amtrust did this. The panel Solicitor's advice was that Mr C's claim didn't have reasonable prospects of being successful because the photographs he'd supplied of the ridge did not show the defect in the road was dangerous. Looking at the photograph Mr C supplied Amtrust with, I'm satisfied that the advice he received was not obviously wrong and I've not seen any evidence to suggest it was based on factual mistakes

either. The person who provided the advice was a qualified Solicitor with suitable experience in personal injury claims. Because of this I think Amtrust were entitled to rely on the panel firm's advice in this case.

I can see that Amtrust initially told Mr C that he would need to obtain the advice of a Barrister in order to challenge the panel firm's opinion. That wasn't right but Amtrust later corrected their mistake and invited Mr C to provide either a comparable opinion from another Solicitor or any further information or evidence he wanted to put to the original panel Solicitor that might change their assessment of the merits of his claim. From what I've seen, Mr C hasn't supplied anything else, so I don't think Amtrust need to do anything further based on that. If Mr C does provide either further evidence to the original panel Solicitor or a further legal opinion that is supportive of the merits of his claim, then I would expect Amtrust to consider this further.

Finally, I understand that Mr C is unhappy with the legal advice he's received from the panel firm. I can't consider complaints against firms of Solicitors. They're independent professionals with their own codes of conduct and their own regulator. If Mr C remains unhappy with their advice, he should raise that with them directly or the Legal Ombudsman.

Overall, I appreciate that Mr C is unhappy that Amtrust haven't agreed to fund his claim under the terms of his motor legal expenses insurance policy but for the reasons I've set out, I don't think they needed to in these circumstances. So, I don't think Amtrust did anything wrong.

My final decision

For the reasons set out above, I don't uphold Mr C's complaint against Amtrust Europe Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 3 January 2025.

Lale Hussein-Venn
Ombudsman