

The complaint

Mr S is unhappy with what Amtrust Europe Limited did after he made a claim on his legal expenses insurance policy.

What happened

In June 2024 Mr S contacted Amtrust seeking funding for a claim he wanted to bring as his property had been damaged by a contractor. Amtrust referred the claim to a panel solicitor for an assessment of its prospects of success. Following discussion with the firm about next steps Mr S asked Amtrust a number of questions about his claim in July. Unhappy with the responses it provided he complained to us.

Our investigator thought Amtrust had provided a reasonable response to the questions Mr S raised. Mr S didn't agree with her outcome. In particular he thought Amtrust was wrong to say taxes paid by a solicitor would count against his policy indemnity limit. And the cost of carrying out the prospects of success assessment shouldn't be included in that either. He thought we should set an appropriate timeline for that assessment to be carried out. And he wanted confirmation Amtrust would fund the claim up to the amount in dispute. So I need to reach a final 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.

The relevant rules and industry guidelines say Amtrust has a responsibility to handle claims promptly and fairly. It shouldn't reject a claim unreasonably.

I've considered those outstanding issues Mr S raised in response to our investigator's view which relate directly to his claim on the policy. I understand his claim relates to a breach of contract. In relation to that the policy provides cover for "*costs to pursue or defend a legal action...*". And it defines costs as "*Legal or accountancy fees and disbursements incurred by the adviser*".

Mr S doesn't feel the tax paid by an appointed solicitor should count against his indemnity limit. But I don't think it was unreasonable of Amtrust to say it would. I appreciate it's likely the legal fees charged by a solicitor for providing their services would include amounts which relate to the running of that business (including the need to pay appropriate business taxes). However, it's the "*legal fees incurred by the adviser*" the policy covers and I think it's fair Amtrust includes the total amount charged to it by a legal representative in that.

Mr S also questioned the amount the policy would provide for his claim. I understand the value of this is £3,800. The policy says "*we will only pay advisers' costs that are proportionate to the amount of damages that you are claiming in the legal actions. Advisers' costs in excess of the amount of damages that you are able to claim from your opponent will not be covered*". Mr S asked if he would therefore have £3,800 available to fund his claim. I

think Amtrust responded reasonably in confirming that's the maximum it would pay but it would only pay costs reasonably and proportionality incurred by the panel firm.

In relation to the costs to be considered against the indemnity limit Amtrust said the limit would apply from when a solicitor was instructed to carry out the merits assessment. I don't think that's necessarily incorrect. But I agree with Mr S the costs of a prospects assessment shouldn't count against the indemnity limit. That's because in carrying out the prospects assessment the appointed representative is primarily providing information so the insurer can decide whether the claim is one that meets the policy terms.

And Amtrust has confirmed to us it won't be including the cost of that assessment within the indemnity limit. I think it could have made that clearer to Mr S at an earlier stage and I appreciate he feels compensation should be paid as he shouldn't have had to raise the matter with us. But I'm not persuaded clearer information on this would have stopped him doing so because he raised other issues as part of this complaint. In any case I don't think any inconvenience he was caused in this case is at a level which would warrant a payment of compensation.

Mr S has also said we should set a timeframe by which a prospects assessment should be completed. However, we can only consider a complaint as defined in our rules which is *"any oral or written expression of dissatisfaction, whether justified or not, from, or on behalf of, a person about the provision of, or failure to provide, a financial service, claims management service or a redress determination, which...alleges that the complainant has suffered (or may suffer) financial loss, material distress or material inconvenience"*. The issue Mr S has raised here is a general point rather than a specific concern about how long the assessment took in his case. So I'm not persuaded it would represent a complaint we could consider in line with the definition set out in our rules.

In any event I don't think setting a timeframe for a prospects assessment to be completed is something it would be appropriate for us to do. The time taken for that is primarily the responsibility of the solicitors involved. That isn't something we can consider. If a policyholder complained to us about what their insurer did in relation to that (for example not taking proactive steps to follow up on the progress of the assessment) we'd consider whether its actions were reasonable in the particular circumstances of that case.

My final decision

I've decided not to uphold this complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 19 March 2025.

James Park
Ombudsman