

The complaint

M, a limited company, complains about what AmTrust Specialty Limited did after it made a claim on its commercial legal protection policy.

M is represented by its director Mr D. All references to Amtrust include its agents and claims handlers.

What happened

In April 2023 Mr D contacted Amtrust seeking assistance with a claim that had been brought against M (and him personally) for unpaid legal fees. After obtaining further information from Mr D about the claim Amtrust referred the matter for an assessment of its prospects of success. An initial assessment was received at the end of May.

That didn't give a clear view on the claim's prospects but highlighted that disputes between an insured and its claims handlers were excluded from cover. In this case M said it wasn't liable for the claimed fees because these were the responsibility of the insurer's claims handlers. As a result of that conflict of interest the case was passed to Amtrust to deal with direct. It turned down the claim. It said while the policy did cover 'Legal Defence' the claim M was seeking cover for wasn't one of those listed in the policy terms. However, it accepted there had been some issues with its handling of M's claim for which it agreed to pay £75.

Our investigator agreed cover wasn't available under the 'Legal Defence' section of the policy. But he thought it could have been provided under 'Contract Disputes'. And while the policy did exclude "*a dispute with us*" that only applied to the claims handlers where they were acting on behalf of Amtrust. That wasn't the case in the dispute M was seeking assistance with. He didn't think that exclusion applied. He said Amtrust should seek a legal opinion on whether the claim would have had prospects of success at the point it was made. If that showed it did Amtrust would need to cover the costs M incurred in line with the remaining terms and conditions of the policy. He thought the compensation for claims handling Amtrust had already offered was fair.

Amtrust agreed with his outcome. Mr D (on behalf of M) didn't agree. In summary he said:

- The court action had been pursued against M and him personally and he'd been caused significant distress as a result of what Amtrust got wrong. He thought the policy should have covered the claim against him and provided arguments in support of that position. And he didn't think it was acceptable Amtrust should be allowed to now obtain a retrospective opinion on the claim's prospects of success.
- The actions of Amtrust had damaged his own reputation and that of his company and had led to lost business opportunities and a significant decline in client trust. And his own credit rating had been impacted as had his own health and well being. He thought compensation should be paid which reflected the impact of what Amtrust got wrong

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 don't think it's any longer in dispute Amtrust wrongly turned down the claim M made. I agree that wouldn't be covered under the 'Legal Defence' section of the policy but it separately covers 'Contract Disputes'. And that says "*we will negotiate for the policyholder's legal rights in a contractual dispute arising from that agreement or that alleged agreement which has been entered into by or on behalf of the policyholder for the purchase, hire, sale or provision of goods or services*". Amtrust has now accepted the claim M made could be covered by that section of the policy and that the exclusion for "*a dispute with us*" wouldn't apply to the circumstances of this claim.

M doesn't agree Amtrust should now be required to obtain a retrospective opinion on whether the claim would have prospects of success. But in my view that is the fair outcome. Where a business has been at fault we need to consider what would have happened but for that failing. And it's a requirement of the policy that for funding to be provided a claim needs to have reasonable prospects of success.

That means the costs M subsequently incurred would only have been covered by its policy if a positive assessment of prospects had been provided by a suitably qualified and experienced lawyer. I think it is therefore appropriate that Amtrust now obtains such an assessment (based on the evidence that would reasonably have been available at the point it should have been obtained in April 2023). If that is positive it should reimburse M the costs it incurred in line with the remaining terms and conditions of the policy.

I've gone on to consider whether there are further steps Amtrust should take. I appreciate Mr D believes the policy should have covered him in his personal capacity. But that's not something I'm considering in this decision. I'm considering here the outcome Amtrust reached on the claim M made. Mr D could seek to bring a separate complaint about whether the policy should have covered costs he incurred personally. But I think it's unlikely that's one which would fall within our jurisdiction.

That's because we can only consider complaints brought by or on behalf of an 'eligible complainant' as defined in our rules (the Dispute Resolution Rules or DISP). An 'eligible complainant' includes a micro enterprise or small business which is why we can consider M's complaint. It also includes a 'consumer'. However, the definition of a 'consumer' is "*an individual acting for purposes which are wholly or mainly outside that individual's trade, business, craft, or profession*".

And in R (on the application of Bluefin Insurance Services) v Financial Ombudsman Service Ltd ("Bluefin") the judge was clear that it was important to consider the underlying activity when determining who is – and isn't – a consumer under our rules. In the Bluefin case the judge concluded that although the complainant was seeking to make a complaint in his personal capacity for a personal loss the complaint was "*inextricably linked with his trade, business or profession*". And he concluded that complainant didn't meet the definition of a consumer and so wasn't able to bring a complaint to our service.

So while I appreciate Mr D may have incurred personal losses as a result of the claim brought against him it seems those would be linked to his role as a director of M. If that's the

case I think it's unlikely we'd be able to investigate that complaint. That's something we'd need to consider in more detail should Mr D pursue that matter; however I wanted to make him aware of this potential jurisdiction issue so he can take that into account when deciding on his next steps.

Mr D has also drawn attention to the personal distress he was caused as a result of what Amtrust got wrong. Again that's not something I can consider as part of this complaint. That's because this complaint isn't one he's making in his own right but as representative of M. That means it's only the impact on M I can consider not any distress Mr D may have been caused personally. And a limited company isn't a natural person and so can't suffer distress in the same way an individual can.

It could be caused inconvenience and I accept its claim being turned down for the wrong reason will have had some impact here. But while Mr D has suggested that caused lost business opportunities and a loss of client trust I haven't seen further evidence to show that happened. Even if it did I'd also need to be satisfied that had come about as a result of what Amtrust got wrong. I've not seen evidence of that either. Overall, I'm not satisfied there's been an inconvenience to M that isn't addressed by the remedy I've already directed and the payment of £75 compensation Amtrust has already agreed.

Putting things right

Amtrust will need to arrange for an assessment of the prospects of success of M's claim based on the evidence that would reasonably have been available in April 2023. If that opinion is positive it will need to reimburse M the costs it had to pay in relation to that claim subject to relevant remaining terms and conditions of the policy. It will also need to pay M £75 if it hasn't already done so.

My final decision

I've decided to uphold this complaint. AmTrust Specialty Limited will need to put things right by doing what I've said in this decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask M to accept or reject my decision before 28 March 2025.

James Park
Ombudsman