

The complaint

Mr H complains that AmTrust Specialty Limited declined to cover a claim on his legal expenses insurance policy.

Where I refer to AmTrust Specialty Limited, this includes its agents and claims handlers acting on its behalf.

What happened

Mr H had a dispute with a garage that had carried out some work on his van. In 2023 he made a claim on the policy to cover the costs of legal action against the garage but the claim was declined, on the basis his claim was unlikely to be successful.

In March 2024 he contacted Amtrust again, saying the garage was now proposing to take legal action against him and he wanted cover to defend the claim.

Amtrust referred the claim to its panel solicitors to assess the prospects of success of Mr H defending the claim. Mr H said things were urgent as he had a court deadline to respond within a few days. Amtrust agreed to cover the costs of making an application to extend the time limit while they waited for the solicitors' assessment.

The solicitors advised that Mr H did not have reasonable prospects of success in defending the claim, and the costs that would be incurred would not be proportionate to the value in dispute. On this basis, Amtrust declined cover.

Mr H complained. He said the solicitors' advice was flawed, they had caused unnecessary delay, and he had ended up with a county court judgment against him as a result. He also said he should have been able to choose his own solicitors to deal with the case.

Amtrust didn't change its position so Mr H referred the complaint to this Service, but our investigator said Amtrust had dealt with the claim in line with the policy terms and had acted fairly. So Mr H has requested an ombudsman's 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.

I am not considering the previous complaint Mr H made about the initial decision to decline his claim against garage – only this complaint about costs of defending the claim against him.

The relevant industry rules and guidance say insurers must deal with claims promptly and fairly; support a policyholder to make a claim; and not unreasonably reject a claim.

The starting point is the policy terms. The policy includes cover for the type of dispute Mr H had with the garage but, as with all insurance, that's subject to the policy terms and any relevant exclusions.

Cover is only provided where a claim has reasonable prospects of success and the costs are proportionate. Terms like this are not unusual and almost all legal expenses policies include this. The policy terms says there must be a 51% or greater chance of winning the case and achieving a positive outcome. In Mr H's case, a successful outcome would mean successfully defending the case. He says this requirement only applies to pursuing legal action, not defending a claim, but the policy terms doesn't limit it in that way. Indeed, one of the factors that may be considered when deciding whether the claim has reasonable prospects is "*Whether a person without legal expenses insurance would wish to pursue or defend the matter.*" So it clearly applies to defending claims.

Insurers will obtain legal advice about the prospects of success and they're entitled to rely on that advice unless it's obviously wrong. Amtrust referred this to solicitors to assess and they advised the defence wasn't likely to be successful. Mr H challenged the advice and the solicitors replied with further comments. They explained why they didn't consider the evidence available was strong enough to successfully defend the claim. They also explained that they thought the likely costs would be disproportionate to the value in dispute.

It was reasonable to rely on the legal advice. Amtrust explained to Mr H that if he wished to challenge the decision it was open to him to obtain his own legal advice. That's in line with good industry practice and is what I'd expect an insurer to do.

Mr H is unhappy that Amtrust referred the claim to its panel solicitors. He says as proceedings had been issued against him, he was entitled to choose his own solicitors. It's correct that, where cover is provided, a policyholder may choose their solicitors at the point where proceedings are necessary. But that only applies if the claim is being covered. To have cover at all, Mr H would need to show his claim has prospects of success. He hasn't done that and, until that happens, Amtrust isn't obliged to cover any legal costs.

Mr H has made a number of comments about the solicitors' advice. I can't comment on the solicitors' actions and can only consider how Amtrust has dealt with the insurance claim. If Mr H disagreed with the legal advice, the appropriate way to challenge that was to obtain his own legal opinion.

Finally, Mr H says there were delays and neither Amtrust nor the solicitors acted promptly to assess the claim or to protect his position in the meantime. As I've explained, I can't comment on the solicitors' actions. There was some onus on Mr H to take reasonable steps to protect his position while he waited for the claim decision. I'm satisfied Amtrust dealt with things promptly and replied to correspondence in a reasonable time. It also agreed to pay costs for Mr H to apply to the court to extend the deadline for his response.

I appreciate Mr H was in a very difficult position, with proceedings being issued against him and short deadlines to respond. But for the reasons set out above, I'm satisfied the way Amtrust dealt with this claim was in line with the policy terms and was fair.

My final decision

My decision is that I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 14 March 2025.

Peter Whiteley
Ombudsman