

## **The complaint**

Mr and Mrs H complain that AmTrust Specialty Limited unfairly declined a claim under their legal expenses insurance policy.

Where I refer to AmTrust, this includes the actions of its agents and claims handlers for which it takes responsibility.

Whilst this is a joint policy, Mr H is predominantly pursuing this complaint, so I'll refer to him only for ease of reading.

## **What happened**

The detailed background to this complaint is well known to both parties, so I'll only summarise the key events here.

In January 2024, Mr H's son was injured at a children's play centre. He made a claim under his insurance policy for the expenses of pursuing legal action for personal injury.

AmTrust instructed its panel solicitors to assess the claim. The solicitors were of the opinion the claim wasn't proportionate to pursue, which is a requirement for cover under the policy. Based on this advice, AmTrust declined the claim.

Mr H raised a complaint, which he brought to our Service. But our Investigator was satisfied AmTrust had declined the claim in line with the policy terms and hadn't acted unfairly.

As Mr H disagrees, the complaint has been passed to me to decide.

## **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.

Mr H has provided extensive comments in support of his position. I'd like to reassure him that whilst I'm aware I've condensed what he's told us in far less detail and in my own words, I've read and considered all his submissions in full. I'm satisfied I've captured the essence of the complaint and I don't need to comment on every point individually, or possibly in the level of detail he'd like, in order to reach my decision. Instead, I've focused on what I consider to be the key and relevant issues in this case. This isn't meant as a discourtesy, but simply reflects the informal nature of our service.

It's a requirement of Mr H's legal expenses insurance policy that any intended claim is proportionate to pursue. The policy terms say:

*"Proportional costs*

*An estimate of the costs to deal with your claim must not be more than the amount of money in dispute. The estimate of the costs will be provided with the assessment of*

*your case and will be carried out by the independent adviser. If the estimate exceeds the amount in dispute then we may decline or discontinue support for your case."*

*"Proportionality*

*We will only pay advisers' costs that are proportionate to the amount of damages that you are claiming in the legal action. Advisers' costs in excess of the amount of damages that you are able to claim from your opponent will not be covered."*

The policy terms also have the following exclusion:

*"There is no cover where...an estimate of advisers' costs of acting for you is more than the amount in dispute."*

This is a requirement of virtually all legal expenses policies, and we don't think it's unfair. Court action can be expensive. A prudent privately paying customer wouldn't want to bear the legal cost if it's likely they would spend more in costs than what they would recover. And we wouldn't expect a legal expenses insurer to either.

AmTrust has taken advice from its panel solicitors, and it's their opinion that Mr H's son's personal injury claim would attract an award of between £840 to £1,500. And the legal costs to pursue it would be in the region of £5,000 plus VAT and disbursements.

Whilst I appreciate Mr H has raised concerns about the advice given, I'm satisfied it is well-reasoned, not obviously wrong, and provided by a suitably qualified lawyer. So I haven't seen anything to persuade me that AmTrust can't fairly rely on it.

Rather, it's up to Mr H to obtain a contrary legal opinion on the proportionality of his claim, at his own cost, if he wants to challenge this further. If such an opinion is supportive then I'd expect AmTrust to reconsider the claim.

Mr H has pointed out that some policies will pay the customer the sum of money in dispute, rather than paying the legal costs of pursuing it. And that the terms in his policy appear to be discretionary. But the policy exclusion quoted above is clear there's no cover for claims which are disproportionate, and I've seen no provision in his policy that AmTrust would pay the claim's value in these circumstances.

On the information available, I'm satisfied it was reasonable for AmTrust to conclude that the policy terms hadn't been met as the claim was not proportionate to pursue.

### **My final decision**

For the reasons I've explained, I don't uphold this complaint.

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

Sheryl Sibley  
**Ombudsman**