

## **The complaint**

Ms M is unhappy that AmTrust Europe Limited has refused to meet a claim under her legal expenses insurance policy.

AmTrust Specialty Limited is the underwriter of the policy, *i.e.* the insurer. Part of this complaint concerns the actions of the agents it uses to deal with claims on its behalf. As AmTrust Europe Limited has accepted it is accountable for the actions of the agent, in my decision, any reference to AmTrust Specialty Limited includes the actions of the agents.  
Your text here

## **What happened**

In September 2023, Ms M contacted AmTrust as she wanted cover for legal costs to defend a claim for payment from a contractor who she said had threatened her with legal action. Ms M also wanted to pursue a claim against the contractor to recover monies she'd paid him in advance and for damage to her property.

AmTrust arranged for one of its panel of pre-approved solicitors to assess the claim. The panel solicitors did not consider that the legal claim Ms M wanted to make had reasonable prospects of success, which is a pre-requisite of cover under the policy. AmTrust said it was entitled to rely on the panel solicitor's assessment and, as there were no reasonable prospects of success, it refused the claim under the policy. AmTrust told Ms M that she could provide her own legal opinion at her own expense to challenge this. It also said that if Ms M could provide a favourable opinion on her case, it would fund a barrister's opinion and if that was also favourable, it would meet the claim.

Ms M was unhappy with this and expressed her dissatisfaction to AmTrust during a telephone call in October 2023. AmTrust considered the complaint and issued a final response letter to the complaint on 5 January 2024, in which it said again that it was entitled to rely on the opinion of the panel solicitors, which was that the costs of defending the claim would exceed the amount in dispute. And, as such, this means Ms M's claim does not meet the policy criteria regarding prospects of success. AmTrust also said the claim had been handled in line with its service standards and policy terms.

Ms M remained dissatisfied, as she says she had made it clear to AmTrust during a long telephone conversation in October 2023, and further conversations later, that she did not want to lodge a formal complaint at that time, as she had to concentrate on pursuing the legal case. Ms M says she made it clear that she intended to lodge a formal complaint at a later date. Ms M subsequently submitted a written complaint in a letter dated 18 February 2024.

AmTrust did not change its position, so Ms M brought the complaint to us.

Ms M has made a number of points in support of her complaint. I have considered everything she has said and provided but have summarised her main points below:

- Her claim was sent to panel solicitors that had been involved in a previous claim of hers and she was not happy with their service. She was unaware this claim was to be allocated to them.
- The panel solicitors said her claim was disproportionate to pursue but this policy term has never been brought to her attention before and she has never had this term referred to in any previous claims.
- In any case, her claim did not have a definitive monetary value at that time and she questions whether the information she provided was reviewed correctly, as the assessment was based on a number of inaccuracies.
- The cost of most legal cases exceeds the claim value, which is why people have legal expenses insurance.
- If the panel solicitors are expensive, they should not be instructed and instead a more competitive firm should be used, which might mean claims would be proportionate.
- There was significant and unacceptable delay in the assessment of her claim, which took seven weeks. AmTrust should have followed this up sooner than it did, given she had requested this repeatedly throughout October 2023.
- She asked that the solicitors draft a 'letter before action' to the other party. AmTrust said it had already paid for the assessment of the case, so would not pay any more and the solicitors said AmTrust would need to pay them to do this. She was not asking for much, just a simple letter to assist her legal claim but her request for even this minimal assistance was denied.
- She has issued a small claims court claim herself and this has been successful and she has received a county court judgment in her favour for around £6,500 against the contractor.
- This experience is the same as when she made a claim in 2022 for another unrelated matter. She wants legal costs incurred in that matter reimbursed (approximately £2,200) and any legal costs incurred in the current legal case and not recovered from the other party to also be reimbursed by AmTrust.
- The legal helpline provided with the policy is unsatisfactory. She often had to chase requests for advice and assistance, as she would not be called back or the advisers would call back at times that they knew were not convenient; and the quality of the legal advice was not as expected.
- The general customer service received was also poor: staff were unavailable and calls were often not returned.
- The policy is unsuitable and not fit for purpose. She has had two legal claims rejected, at times she needed assistance, which has caused her significant emotional, mental, physical and financial trauma. She purchased the cover, so she would have help in such adverse situations. This has also been compounded AmTrust's poor service and the fact she has also had to pay for her own legal fees.

Ms M also asks for a written explanation as to why AmTrust initiated a formal complaint process without her knowledge, which it continued even after she contacted it in November 2023 to ask it to discontinue the process, and an apology for its actions.

Ms M also says that after AmTrust became aware of her dissatisfaction, it warned her about making excessive phone calls. She denies that she has made a disproportionate number of phone calls to AmTrust and says that if it had dealt with her claim properly, she wouldn't have to contact it so often. Ms M wants Amtrust to apologise for this unfounded allegation.

One of our Investigators looked into the matter. He did not recommend that Ms M's complaint be upheld, as he was satisfied AmTrust did not have to accept the claim, in reliance on the panel solicitor's assessments of the prospects of success.

Ms M did not accept the Investigator's findings, so the matter has been referred to me to review afresh.

Ms M has other complaints ongoing and has raised other complaint points but I am only considering the complaint against AmTrust about the handling and rejection of the claim she made in late 2023. I cannot in this complaint deal with the 2022 claim, issues with the legal helpline, issues about the sale of the policy, or changes to or the process for home emergency claims.

### **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.

Ms M's policy provides cover for legal costs and expenses in relation to a number of potential legal disputes, including disputes about breach of contract. However, as with virtually all legal expenses insurance policies, it is a re-requisite of cover that any claim have reasonable prospects of success. The relevant term in Ms M's policy says:

*"Prospects of success*

*At any time We may, but only when supported by independent legal advice, form the view that You do not have a more than 51% or greater chance of winning the case and achieving a positive outcome. If so, We may decline support or any further support. Examples of a positive outcome are:-*

*a) Being able to recover the amount of money at stake*

*b) Being able to enforce a judgement*

*c) Being able to achieve an outcome which best serves Your interests".*

The policy also requires that any claim be proportionate to pursue. It says as follows:

*"Proportionality*

*We will only pay Advisers' Cost that are proportionate to the amount of damage you are claiming in the Legal Action."*

We do not regard these terms as inherently unfair: a legal expenses insurer cannot reasonably be expected to fund expensive litigation whose prospects of success are speculative or uncertain, or that it should fund legal costs for a claim that a prudent uninsured person would probably not fund themselves.

It is a principle of insurance law that it is for the claimant to establish, on the balance of probabilities, that they have a valid claim under a policy. So, this would include establishing that it has reasonable prospects of success and that it is proportionate to pursue. However, it is usual in legal expenses policies for the insurer to appoint lawyers to assess the prospects of a legal claim at its own cost, rather than insist on policyholders doing so at the outset of a case. AmTrust has done just that and obtained a legal opinion from one of its panel of pre-approved solicitors.

Where an insurer has rejected a claim for lack of prospects, it isn't for us to evaluate the merits of the legal case. Instead, we look at whether the insurer has considered the claim fairly. So long as it has obtained independent legal advice on prospects from suitably qualified lawyers, we will not generally question its reliance on that advice, unless we think it was obviously erroneous or based on factual mistakes.

The panel solicitor concluded the claim would be disproportionate to pursue. They also said there were doubts about recovering any award that was made in Ms M's favour. Ms M is adamant that the solicitor's assessment of her claim was flawed and based on incorrect information. She considers that AmTrust should have challenged the legal opinion received and accepted her further information, instead of accepting it on face value.

It was not for AmTrust to challenge this opinion unless it was obviously flawed. While I note Ms M's strength of feeling about her own case, I have not seen any convincing evidence that would suggest that the panel solicitor's opinion was obviously wrong and should not have been relied on. I can also see that AmTrust did ask the panel solicitors for some further information about the reasons for its advice. I think this was reasonable. AmTrust is not legally qualified to assess the legal advice in the way Ms M suggests and it was therefore entitled to rely on the advice of the suitably qualified legal experts to reject Ms M's claim.

Ms M also says that part of her claim could have been brought under the property section of the policy, rather than the contract section and if it had been, then it would have had prospects. I have not seen any convincing evidence that the issues raised by the panel solicitors about proportionality and recovery would have been any different if it was based on a property claim, rather than a breach of contract claim; and there is no evidence the prospects of success would have been any different either.

Having considered everything carefully, I therefore consider AmTrust was entitled to refuse the claim, as it did not meet the policy requirement of having reasonable prospects of success.

It is usual practice that if the insurer has already paid for a legal opinion that says there are no reasonable prospects of success, that the policyholder would need to provide a contrary opinion if they do not agree. I don't think that's unfair.

I also do not think it is reasonable to expect AmTrust to have paid for the panel solicitors to take any legal action, including writing the pre-action letter Ms M asked it to do. She says it would not have incurred much time or expense but as the claim did not meet the policy requirements, it was not obliged to do so.

The solicitors did not say Ms M's claim had no chance of success, only that it did not meet the threshold for cover under the policy for AmTrust to pay their fees. Therefore, the fact that Ms M achieved a successful outcome by taking the case to court herself does not mean that the panel solicitor's assessment was incorrect and shouldn't have been relied on. It also does not change the fact that they considered the legal fees involved in them representing Ms M in any such action, would have been more than the claim was worth and so would have been disproportionate.

#### Time taken to assess the claim

Ms M is also unhappy with the time taken to deal with her claim. She says there was a significant delay and the solicitor's opinion should have been provided within two to three weeks.

I can see that the panel solicitors were instructed on 12 September 2023. There was some delay in them providing their assessment. I note that Ms M did also complain direct to the panel solicitors about this and it offered £250, which was later increased to £400, for the time taken to assess the claim.

AmTrust is not responsible for the solicitor's actions, including how long they take to provide an assessment. I can see that when it was aware there was a delay, AmTrust chased the

panel solicitors for their assessment on the claim on 20 and 24 October 2023. I think this was reasonable. The panel solicitors spoke to Ms M on 24 October 2023, to give their view and also sent it in writing.

AmTrust is not responsible for the time taken by the solicitors and I think it acted reasonably in chasing the solicitors when it was aware of the delay. I do not therefore intend to require it to do anything further.

#### General claims-handling service and other matters.

Ms M is unhappy that the claims-handling agents are not being held accountable for their actions. The agents act on behalf of AmTrust and so it is responsible for anything the agents do or do not do.

I can see from the papers provided to me that Ms M could not always get through to speak to the person she needed to. I appreciate this would have been frustrating. However, sometimes things go wrong but there is no automatic right to compensation.

Having considered everything carefully, I can see that overall Ms M's communications were responded to in reasonable time and there was no impact on the outcome of her claim as a result of any delay. I do not therefore consider that any award is warranted for this.

#### Complaint-handling

Complaint-handling is not a regulated activity in its own right, so I cannot consider Ms M's complaint about the fact that AmTrust started a formal complaint process that she says she did not instigate, or any failure to address all parts of her complaint. Having said that, I would point out that AmTrust is obliged to consider any expression of dissatisfaction and deal with it. And its actions did not prevent Ms M from being able to raise her full complaint with AmTrust and also refer it to us.

#### **My final decision**

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms M to accept or reject my decision before 15 April 2025.

Harriet McCarthy  
**Ombudsman**