

The complaint

Mr M's complaint arises from a claim made under his legal expenses insurance section of his home insurance policy underwritten by AmTrust Specialty Limited.

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

What happened

In March 2024, Mr M contacted AmTrust as he wanted cover to take action for professional negligence against a solicitor that had represented him.

AmTrust referred the claim to one of its panel of pre-approved solicitors to assess. The panel solicitors said they would need a barrister to complete the review, as it was complex and they had some concerns about whether the claim had reasonable prospects of succeeding, which is a pre-requisite of cover. The panel solicitors therefore asked AmTrust for approval of the costs to refer to a barrister. AmTrust considered the request but having reviewed the matter said the claim fell within an exclusion under the policy for claims relating to the policyholder's business, ventures for gain, or employment. AmTrust therefore said it would not therefore fund the barrister's review or any other action, as the claim was not covered.

Mr M was unhappy with this and the time taken by AmTrust to decide to reject his claim, so he complained.

AmTrust did not change its position on the claim but did accept that it should have considered the exclusion at the outset and so Mr M could have been notified several months earlier that the claim was not covered. AmTrust apologised for this.

As AmTrust did not change its position on the claim, Mr M referred his complaint to us. He has made a number of points in support of his complaint. I have considered everything he has said and have summarised his main points below:

- AmTrust initially approved funding for his claim and then carried out an “*arbitrary*” review exercise.
- AmTrust has incorrectly said it would only cover professional negligence if the original claim (that the solicitors was acting in) would have been covered under the policy.
- His claim is about a solicitor's failure to discharge their professional duties and is not a business dispute. It is entirely independent of the underlying claim and does not fall into the exclusion criteria referred to.
- Even if the exclusion applies, it is not acceptable to apply it six months later. AmTrust's sudden reversal after months of engagement and after costs had been incurred, demonstrates bad faith and inconsistency.
- The policy provides up to £100,000 cover for civil legal disputes within the UK. The negligence claim falls squarely within these bounds and should not be excluded

simply because the original dispute had a commercial origin.

Mr M says that the refusal of his claim risks him losing the opportunity to obtain the legal remedy he is entitled to, as his claim is limited in time

One of our Investigators looked into the matter. He did not recommend that it be upheld, as he was satisfied that AmTrust was entitled to reject the claim. The Investigator said the policy cover made clear it was intended for individual consumers, rather than a business entity or a policyholder acting in relation to business or commercial enterprise. The policy cover for breach of contract set out that it covers disputes about services for private use, so the Investigator didn't think there was cover in any event, as the contract with the solicitor was not entered into in Mr M's personal capacity. The Investigator also said that, in any event, the exclusion would apply as well.

Mr M does not accept the Investigator's assessment. He says he has £100,000 cover for substantial matters such as the claim he has and the cover is not intended only for small claims, as the Investigator suggests.

As the Investigator was unable to resolve the complaint it has been passed to me.

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 M's policy provides cover for various legal disputes that might arise in the policyholder's personal life, including employment, disputes about their home, personal injury and breach of contract.

The breach of contract section of cover says:

“Contract

What is insured:

Costs to pursue or defend a legal action following a breach of a contract you have for:

a) Buying or renting goods or services for your private use.”

This section of cover is subject to various terms and conditions, including the following exclusion:

“What is not insured:

Claims ...

c) Relating to your business, venture for gain, profession or employment.

These terms are not uncommon in legal expenses insurance policies such as this one and I do not consider them unclear or unfair. Insurers are however required to apply any policy terms fairly. I have therefore considered whether AmTrust has acted fairly in applying these terms to refuse Mr M's claim. Having done so, I think it has acted fairly and is entitled to reject Mr M's claim. I will explain why.

I think it is reasonable to interpret the reference to the contract in dispute being for “*services for your private use*” as meaning it covers contracts for services entered into in the policyholder’s personal capacity and not as a business entity or in any commercial capacity. I therefore consider the underlying claim (that was the reason why Mr M entered the contract with the solicitors) is relevant and I agree with the Investigator that, this means that the underlying claim that the solicitors acted for Mr M in would have to have been for his “*private use*”.

I have considered the High Court claim form submitted on Mr M’s behalf in 2018 by the solicitors that he now wants to bring a claim for professional negligence against. It sets out that he was claiming against two defendants in relation to an agreement by Mr M to lend money in relation to a business enterprise and monies claimed by Mr M in respect of work he did in arbitrating a business deal. (This is only a very brief summary of a complex claim.) I am satisfied that the underlying claim did relate to Mr M’s “*business, venture for gain, profession or employment*.” I don’t think that Mr M has sought to dispute this,

As the underlying claim was relating to business activities, it follows in my opinion that the contract entered into with the solicitors to pursue his rights in relation to these activities was not a contract for his “*private use*”.

In case, for argument’s sake, I am wrong about this, I have also considered for completeness if the exclusion would apply and I think it would.

Mr M says the exclusion does not apply, as his claim is about a solicitor’s failure to discharge their professional duties and is not a claim about his “*business, venture for gain, profession or employment*”. He says it is entirely independent of the underlying claim.

Mr M also says this is supported by the definition of an “insured event” in the policy, which says:

*“Insured event is defined as:
The incident or the first of a series of incidents which may lead to a claim under this insurance. Only one insured incident shall be deemed to have arisen from all causes of action, incidents or events that are related by cause or time”.*

Mr M says the first insured event here is the negligence in 2018 of the solicitors.

I have considered what Mr M has said very carefully but I do not agree.

The exclusion applies to any claims “relating to your business, venture for gain, profession or employment.” (My emphasis.)

While Mr M’s potential legal cause of action is the negligent act or acts of the solicitors, those acts still relate to the underlying claim. And the remedy Mr M seeks from the solicitors is the loss of opportunity to obtain the award he wanted in the underlying claim. I think the underlying claim does relate to the claim Mr M wants to bring against the solicitors and as such, the exclusion would fairly apply to his claim. I do not think the definition of an insured event changes this.

With regard to the time taken by AmTrust to deal with the claim, I agree that this should have been raised sooner than it was. I can appreciate it was frustrating for Mr M to receive this news several months after lodging the claim and when he thought he would be covered. However, AmTrust is not bound by any such error. It was still assessing the claim to see if it met other policy criteria and it is not obliged to disregard clear policy terms, if it later finds that there are terms that mean a claim would not be covered for other reasons.

I have considered whether any award should be made for the delay but there is no reliable evidence of any financial or other loss to Mr M. He has had the benefit of having his legal claim assessed without cost to him and he still has time to make his claim, as he has told us that limitation for his professional negligence claim expires later this year.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 8 August 2025.

Harriet McCarthy
Ombudsman