DRN-5610813

The complaint

M, a limited company, complains about what AmTrust Specialty Limited (Amtrust) did after it made a claim on its commercial legal expenses insurance policy in March 2023.

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

What happened

In March 2023 Mr D contacted Amtrust seeking assistance with a claim which had been brought against M for unpaid legal fees by a firm of solicitors (T). After confirming policy coverage and obtaining further information about the claim it was referred to solicitors for a legal assessment towards the end of April. Additional information was provided to those solicitors via Amtrust in May and the assessment was completed at the start of June.

It concluded the claim didn't have reasonable prospects of success and wouldn't be proportionate to pursue in any case. It also noted it had been reported to Amtrust significantly outside of the 180 day timeframe the policy required. Amtrust said it wouldn't be providing funding for the claim. However, it accepted there had been some delays in handling the claim and responding to M's complaint. It said it would pay £200 to recognise the impact of that on M.

Our investigator thought the assessment provided by the panel firm was properly written and reasoned and from someone qualified to give it. He thought it was reasonable of Amtrust to rely on it when concluding the policy requirement for a claim to have reasonable prospects of success hadn't been met. He also thought it was fair of Amtrust to say paying more in costs that the amount at stake wouldn't be reasonable. And he thought its position had been prejudiced because it was told about the claim late. He thought £200 fairly recognised any inconvenience M was caused by poor claim and complaint handling.

Mr D didn't agree. He said the fact compensation had been offered meant Amtrust accepted wrongdoing had taken place. He then argued a different insurer (P) should be responsible for this matter because the issues related to claims raised under a legal expenses policy of which it was the insurer in 2018.

In response our investigator explained this policy provided cover where the date of occurrence of the insured incident happened within the period of insurance. M's claim against T arose from the non-payment of a fee note and court proceedings which were then issued. He thought Amtrust fairly concluded that fell within the period in which it was the insurer of M's policy and was satisfied it was the correct respondent for the claim M made.

Mr D didn't agree and made detailed submissions on that point. He said:

- P were the insurer for the claims raised under its legal expenses policy and Amtrust had no involvement with that. Subsequent claims, including this one, were inextricably linked to that. They arose from the same policy, same events and related to the same insured

party. He drew attention to internal emails and telephone notes from the claims handlers which he said supported that.

- He didn't accept this issue was an independent claim or new matter. He said it all flowed from the original claim which had been accepted under the policy insured by P. And because of an error by M's broker legal expenses cover wasn't in place under this policy from September 2019 until May 2021 meaning there wasn't a policy insured by Amtrust in place at the material time.

- He provided an analogy of a car insurance complaint where the original insurer would remain responsible for the entire claim regardless of delays, new evidence or whether he subsequently switched to a different insurer. He thought on that basis it was absurd to suggest Amtrust was responsible for this claim and complaint.

- He reiterated that this (and other) complaints should have been pursued against the claims handlers who'd dealt with the matter and said it was a breach of the relevant complaint handling rules not to do that. And jurisdiction remained a live issue in respect of any complaint we were considering.

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.

In my view some of the points Mr D has made relate to other complaints he's made on behalf of M. That includes matters relevant to a separate claim against it by a different firm of solicitors (L). I've previously issued a final decision on a complaint from M which related to that claim. And we've separately explained we aren't considering further issues raised about cases where a final decision has been issued. I'm solely concerned here with the claim made in March 2023 which related to the court proceedings T had brought.

Mr D has also reiterated that this complaint (and others) should be considered against the claims handlers who dealt with the claim. Another Ombudsman has issued a previous jurisdiction decision on this complaint explaining why we aren't able to do that. I've reviewed that decision and I agree with the jurisdiction outcome that Ombudsman reached. I don't have any further comment to make on the reasoning contained in that decision.

Turning to the points Mr D has made about why he thinks a different insurer should be responsible for this claim I agree that (in accordance with the Dispute Resolution Rules and in particular DISP 3.2.1) an Ombudsman is required to have regard to whether a complaint is out of jurisdiction. I don't agree the points he's raising represent a jurisdiction issue.

There's no dispute Amtrust are a firm covered by our jurisdiction, carrying out a regulated activity from an establishment in the UK and that M is an eligible complainant. It's also clear this complaint was referred in time. The question is whether Amtrust acted correctly and fairly in deciding the claim made to it by Mr D in March 2023 fell within the period of insurance for which it was responsible. I think that's something it's appropriate for me to determine in this decision.

I accept there's clearly a link between the claim made by M on its policy insured by P and the subsequent claim against it for unpaid legal fees from T. I understand the initial claim was brought against a third party and T's costs were incurred in relation to that claim. I also recognise Amtrust weren't involved with that claim as they weren't the insurer of M's legal expenses policy at that time.

But Mr D made a separate claim in March 2023 for assistance in defending the claim T had brought against M. And its policy with P says it provides cover where **"***the date of occurrence of the insured incident happens during the period of insurance and within the territorial limit".* That policy says *'date of occurrence'* means *"for civil cases (other than under insured incident - 4 Tax Protection), the date of occurrence is when the cause of action first accrued".*

M's broker told us P's period of insurance ran until September 2018 when Amtrust became the insurer of its commercial legal expenses policy. It was then omitted (in error) from September 2019 and was put back in place as part of a mid-term adjustment in June 2021. The claim against M from T relates to professional services provided between January 2020 and March 2021 and a fee note issued for those services on 29 March 2021.

I appreciate the advice T gave related to the ongoing claim M was pursuing under its policy with P but that period of insurance ended some years before any cause of action for the claim T subsequently brought could have accrued. So I don't agree with Mr D that this claim should have been considered under the policy he had with P. And the emails and call notes he's provided don't change my thinking on that. They all predate the claim from T being made and in fact appear to relate to links between the two claims M was pursuing against the third party (for which they say one limit of indemnity would apply).

Mr D has provided an example of a car insurance claim but the circumstances he describes aren't analogous to what happened here. There's no dispute P remains responsible for the claims against the third party made on M's policy with it. The issue is that there was a subsequent claim against him from an entirely different business (T) for an unpaid fee invoice where the advice given, the invoice date and the subsequent court proceedings all fell outside of P's period of insurance.

I've thought about whether Amtrust acted fairly in agreeing to provide cover for this claim under M's policy with it. That policy contains similar wording to P's and says it provides cover as long as "*the date of occurrence of the insured incident happens within the period of insurance…*". This policy defines date of occurrence as "*when the cause of action first occurred".*

Mr D's position appears to be that the cause of action in this case occurred in the period when he didn't have legal expenses cover in place with Amtrust (because of an accepted error by his broker). I find that argument confusing as the logic of that position would be that neither P or Amtrust would be responsible for the claim M subsequently made. In any case correspondence from the panel solicitors says Amtrust was prepared to accept the insured event had taken place during its period of insurance. That may be because of the acknowledged error by the broker or because it's accepted M only became aware of the issue giving rise to this claim during that period. Either way that's been to M's benefit and I think Amtrust treated it fairly in agreeing to consider this claim against the terms and conditions of its policy.

I've gone on to consider its handling of that claim. In relation to that 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've looked at the terms and conditions of M's policy which does include cover for 'Contract Disputes'. 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".* As this claim arose out of a contract M entered into with solicitors I think it's one the policy could, in principle, cover.

However, it's also a condition for cover to be provided that *"in civil claims it is always more likely than not that an insured person will recover damages (or obtain any other legal remedy which we have agreed to) or make a successful defence*". So for funding to be provided a claim needs to have reasonable prospects of success.

As an insurer isn't a legal expert we don't think it's in a position to carry out that assessment and it should be carried out by a suitably qualified lawyer who has relevant experience. Where that has been done we think it's reasonable for an insurer to rely on a properly written and reasoned legal opinion when deciding whether a claim has prospects of success or not. So after obtaining further information about the claim I think Amtrust acted correctly in asking for the claim to be assessed by a panel solicitor.

I've reviewed that assessment and I think it is properly written and reasoned. It says there was strong evidence M agreed to make payment of the solicitors fees and that those solicitors were therefore entitled to seek recovery for work done. And the assessment was carried out by a qualified solicitor with specific experience in complex contractual disputes.

I don't think there was any reason Amtrust shouldn't have relied on that when concluding the policy requirement for a claim to have prospects of success hadn't been met. I appreciate M does appear to have had some success in defending the claim at court but that doesn't mean Amtrust was at fault in relying on the assessment it had been provided with. A negative prospects assessment doesn't mean a claim has no chance of being successful; just that it's unlikely.

In any event the policy doesn't cover "*any claim reported to us more than 180 days after the date the insured person should have known about the insured incident"*. In this case the insured incident is the contractual dispute and M would have likely known that existed soon after the solicitors issued it with an invoice it didn't think it needed to pay. Their fee note was issued in March 2021 so I think M would likely have been aware of an issue here within a few months of that (at the latest). A claim wasn't made on the policy until March 2023.

I think M is in breach of the notification condition. The panel solicitors said they thought Amtrust's position had been prejudiced by that. Amongst other things they said the late notification had prevented it from achieving a settlement of the claim prior to court action being commenced. And it was likely such a settlement would have been achieved. In my view Amtrust was entitled to rely on this term to decline the claim regardless of the position on prospects of success.

I appreciate there's also been discussion over whether Amtrust was entitled to turn down the claim on the basis it wasn't proportionate to pursue. I don't need to reach a finding on that because I'm already satisfied Amtrust was entitled to decline cover on the basis of the negative prospects assessment and late notification. I agree there were some delays by Amtrust in handling the claim (and in then responding to the complaint M made) but I think the £200 it's already agreed to pay is enough to put things right here. I don't agree Amtrust's offer of that payment shows there were issues with its decision to turn down the claim itself.

My final decision

AmTrust Specialty Limited has already made an offer to pay £200 to settle this complaint and I think this offer is fair in all the circumstances. So my decision is that AmTrust Specialty Limited should pay M £200 (if it hasn't already done so).

Under the rules of the Financial Ombudsman Service, I'm required to ask M to accept or reject my decision before 3 September 2025.

James Park
Ombudsman