

The complaint

Mr H complains AmTrust Speciality Limited mistakenly told him he had legal expenses cover attached to his home insurance.

Mr H's complaint centres on a claim that AmTrust said was covered and the way it handled that claim. Consequently, Mr H says he's suffered financial losses with amounts owed to his solicitor, who I'll refer to as MES.

In this decision, all references to AmTrust include its claim handlers.

What happened

Mr H had a dispute with his former employer and started a claim under his home insurance policy, in which legal expenses cover was an optional 'add-on'. In fact, Mr H hadn't taken out the additional cover but nonetheless AmTrust advised him that he was covered, and a claim process commenced.

The claim started in November 2023 and in December 2023 AmTrust requested Mr H provide a 'prospects of success' assessment from MES who he'd already instructed to act on his behalf. MES provided the assessment concluding, at that point, his claim met the threshold for cover.

AmTrust accepted the assessment and sent 'terms of appointment' to MES, which set out information including the policy terms and conditions and the hourly rate. One of the terms stated MES was to provide AmTrust with updates, at least monthly, whether there had been developments or not.

In early March 2024 MES sent AmTrust Mr H's employer's response (ET3) to the claim being made by Mr H. On 22 March 2024, AmTrust's lawyers provided it with an assessment stating that the prospects of Mr H's claim succeeding now fell below the policy threshold. However, on 26 March MES provided a monthly report confirming Mr H's claim continued to meet the policy threshold for prospects of success, that further work would be undertaken to calculate Mr H's losses, a three-day hearing had been scheduled for May 2024, and estimated legal costs (up to £10,080 inc VAT) to conclusion of the case. MES requested an uplift in the fee reserve to £2,500 inc VAT explaining what work this would cover.

On 2 April 2024 AmTrust sent an email to MES explaining that its own lawyers, having reviewed the ET3, did not consider that Mr H's claim against his former employer enjoyed prospects of success. In response on 8 April, MES said it still believed Mr H's claim had merit and that the former employer's representative had made a settlement offer, details of which were provided to AmTrust. A call took place on 12 April between MES and AmTrust, which was followed up with an email from MES stating that it had put forward a counteroffer to the Respondent which was under consideration. MES provided a monthly report on 29 April within which it asked AmTrust if its lawyers had any comment to the information provided on 8 April that the claim still enjoyed prospects of success. MES also gave a general update on the case progression and the fact the counteroffer had been rejected. Among other information provided, the current and future costs of MES were set out and a request was made to increase the reserve fee.

On 2 May 2024 MES emailed AmTrust requesting confirmation as a matter of urgency, particularly as the hearing was starting the following week. On the same day MES notified AmTrust that a further settlement offer and counteroffer were 'live' and again asked for a response from AmTrust.

On 3 May 2024, AmTrust notified MES that it had just realised Mr H didn't in fact have legal expenses cover on his home insurance policy and so it was only willing to cover costs already authorised (the initial reserve of £1,500 + VAT) much earlier in the timeline. MES replied on 7 May to say that requests for increases in the reserve fee amount on 26 March and 29 April had not been dealt with and reassurance was given during a telephone call in April that the increase should be fine. The mistake in cover was not a result of either MES or Mr H's conduct. MES identified its fees to date amounted to £6,114 inc VAT and requested that all fees to conclusion of the case were covered. AmTrust was not willing to change its position and reiterated that it would only cover costs it had authorised in writing (£1,500 + VAT).

Mr H made a complaint to AmTrust and it accepted fault for confirming legal expenses cover when there was no such cover in place. AmTrust said there were conflicting legal views on the claim's prospects of success (early April 2024), and it would have been necessary to seek a 'determinative opinion' from Counsel. And as such, no further funding would have been agreed until a positive opinion had been received.

Our investigator explained why she believed AmTrust should cover any additional fees reasonably incurred that would've been paid had a policy been in place. AmTrust's position is that it does not believe it fair that it should bear all legal costs Mr H incurred. It has further stated that the Employment Tribunal process is designed for the lay person to be able to navigate without formal representation. And indeed, that Mr H may have pursued the legal case regardless of whether he had legal expenses insurance or not. In relation to the fees, further enquiries by the investigator revealed the following position:

- Fees AmTrust agreed to cover £1,500 + VAT.
- Fees incurred up to the point AmTrust notified no policy in place (3 May 2024) £4,895 + VAT.

Additional fees up to conclusion of the matter (8 May) £240 + VAT.

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.

It's accepted that Mr H did not in fact have legal expenses (an optional extra he could have added) with his Home Insurance Policy, but he was mistakenly advised by AmTrust that he had this cover when he made a claim enquiry. It appears he contacted the legal helpline identified in his policy and was given a reference number for his potential legal action. It's clear to me that AmTrust is wholly responsible for the error and indeed led Mr H to believe he had legal expenses cover. AmTrust corresponded with Mr H's chosen solicitors (MES), sent terms of appointment and, having accepted these, MES remained in regular contact with AmTrust.

The solicitor communicated with AmTrust as she was required to under the terms of appointment, including monthly reviews. While, in late March, AmTrust's lawyers concluded there were no longer reasonable prospects of success, MES challenged that and indeed held a conversation with AmTrust. AmTrust's position is that it would have been necessary

to seek a determination from Counsel on the prospects of success, but it did not communicate this to MES or Mr H.

The reality of what transpired is that AmTrust's communication and conduct of the claim was inadequate from start to finish. While AmTrust refers to a policy exclusion that says no cover exists for costs not agreed to in advance by AmTrust, I'm not persuaded applying that in this case is fair.

The terms of appointment place time limitations on the solicitor to provide certain information, usually within 7 days of a particular event. MES complied with this. AmTrust was advised by its lawyers on 22 March that Mr H's claim no longer enjoyed reasonable prospects of success, but on 26 March received MES' monthly report that the claim still enjoyed prospects. AmTrust only communicated its lawyers' view on prospects on 2 April and MES responded on 8 April to state its continued view that the claim had merit. Further updates and a monthly report were provided in April and on 2 May MES sent an 'urgent' email asking for confirmation of a reserve increase as requested in March and April. AmTrust failed to communicate a decision or the determinative opinion it may requires. And it was on 3 May that Amtrust finally made contact stating Mr H didn't have a legal expenses policy and couldn't provide further cover.

In my opinion, AmTrust's communication was poor because it failed to respond specifically to MES' emails and requests. And when it challenged the issue of prospects, AmTrust failed to set out clearly the next steps, namely that its process required Counsel's opinion. There were plenty of opportunities to engage with MES but AmTrust failed in this respect, and so I'm not satisfied it would be fair for AmTrust to hold itself only to those costs it had initially authorised given the delays and inadequacies in its handling. It would, in effect, benefit from poor communication and not meaningfully engaging with MES, Mr H's solicitor. AmTrust knew how the claim was proceeding, that MES was progressing towards a three-day hearing and of the requests for further funding. AmTrust should have been prompter and more specific in its communication with Mr H's solicitor.

I have considered AmTrust's point that Mr H may have continued with the claim whether or not he had legal expenses cover. It's not uncommon for litigants to seek initial legal advice on their prospects for mounting a legal claim. The crunch point though is often how that claim would be conducted, funded and especially the risks of significant costs should a claim be unsuccessful. In the Employment Tribunals costs awards are the exception rather than the rule and parties usually bear their own costs. So, had AmTrust got it right and informed Mr H he had no legal expenses cover, I think it likely that he wouldn't have pursued the claim with legal representation and so avoided the costs incurred in having legal representation. As such, like the investigator, I uphold Mr H's complaint.

Putting things right

AmTrust must pay Mr H's reasonable and necessary costs for the Employment Tribunal claim he made. There are some parameters which I'll outline:

- The investigator said AmTrust should cover all legal costs and I determine likewise, the fair end date for cover is up to and including 7 May 2024. I have used this date as the email AmTrust sent MES notifying cover was withdrawn was after 1700hrs on Friday 3 May and indeed Monday 6 May was a bank holiday. So, the first opportunity MES had to understand cover was being withdrawn was on 7 May. On 7 May a settlement was reached that obviated a scheduled three-day hearing and so costs to be covered by Amtrust include fees for this settlement.
- If AmTrust wants to have its cost assessor review MES' fees etc then it can but

should do so promptly. In this case it means within four weeks of the date it receives MES' costs after we have advised AmTrust Mr H has accepted this final decision. If AmTrust is already in possession of MES' costs, then it should have its cost assessor report back within four weeks of us advising it that Mr H has accepted this final decision.

- As Mr H has told us he has not paid any legal costs to MES no interest award is merited.

My final decision

My final decision is that I uphold this complaint and require AmTrust Speciality Limited to do what I have described in the section above 'Putting things right'.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 10 July 2025.

Sean Hamilton
Ombudsman