

## The complaint

Mr P's complaint is about a claim he made on his AmTrust Specialty Limited ('Amtrust') legal expenses insurance policy.

Mr P says Amtrust treated him unfairly.

In this complaint all references to Amtrust include their claims handlers.

## What happened

The details of this complaint are well known to both parties, so I won't repeat them here. Instead, I'll focus on giving my reasons for my 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.

Having done so, I uphold Mr P's complaint for broadly the same reasons set out by the investigator and with the same redress.

Before I explain why, I wish to acknowledge the volume of submissions made by both parties in this complaint as well as Mr P's strength of feeling about it. Whilst I've read everything they've said, I won't be addressing it all. That's not intended to be disrespectful. Rather it's representative of the informal nature of the Financial Ombudsman Service. Instead, I'll focus on the crux of this complaint, namely whether Amtrust did something wrong and if so what they need to do to put things right here.

I also wish to acknowledge the difficult position Mr P now finds himself in both in relation to his health and his financial circumstances. I am very sorry to hear about this and appreciate why his complaint is so important to him.

I turn now to the main part of Mr P's complaint, namely Amtrust's refusal to fund a higher hourly rate in relation to his own choice of legal representative. I've been provided with a copy of Mr P's policy. For employment disputes it covers:

*"Standard Advisers' Costs to pursue a Legal Action, arising from an Insured Event, brought before an Employment Tribunal (or its equivalent in Scotland, Northern Ireland, the Channel Islands or the Isle of Man) against an employer (or ex-employer) for breach as an Employee of Your:*

- *Contract of Employment; or*
- *legal rights under employment laws."*

*"Standard Advisers' Costs" are defined as:*

*"The level of Advisers' Costs that would normally be incurred in using a specialist panel solicitor or their agents as defined in the Maximum Amount Payable and may, at Our*

*discretion, vary from time to time.”*

“*Maximum Amount Payable*” is set out within the policy to mean:

*“...will pay up to £100 per hour plus VAT up to the maximum amount payable in respect of an Insured Event is £100,000.”*

It also states:

*“Where it is necessary to start court proceedings or a Conflict of Interest arises, and You wish to nominate a legal representative to act for You, You may do so. Where You have elected to use a legal representative of Your own choice You will be responsible for any Advisers’ Costs in excess of Our Standard Advisers’ Costs. The Adviser must represent You in accordance with Our standard conditions of appointment which are available on request.”*

It’s common for legal expenses insurance policies to contain such a term and it’s consistent with the relevant laws applicable to freedom of choice. Regulation 6 of the Insurance Companies (Legal Expenses Insurance) Regulations 1990 says:

*“where under a legal expenses insurance contract recourse is had to a lawyer (or other person having such qualifications as may be necessary) to defend, represent or serve the interests of the insured in any inquiry or proceedings, the insured shall be free to choose that lawyer (or other person)”*

The phrase “*any inquiry or proceedings*” means when it becomes necessary to issue court proceedings, or proceedings in another formal place of inquiry, such as a tribunal.

At the point at which Mr P’s claim was made to Amtrust, he was entitled to freedom of choice of his own Solicitors. He expressed this request at the point of making his claim to them. After establishing that cover was available, Amtrust agreed to this request but on the basis that the hourly rate payable to those Solicitors did not exceed the “*Maximum Amount Payable*” in accordance with the policy terms. The issue for me to determine is whether this approach was reasonable.

As the investigator explained, we don’t think a term like this is unfair, as long as the hourly rate specified doesn’t render Mr P’s freedom of choice meaningless. Mr P has made several submissions in relation to this. One of those is that the current guidelines for Solicitor’s hourly rates should have been applied here. But we’ve only considered similar rates in circumstances where insurers haven’t applied a specific hourly rate within their policy terms. In this case Amtrust have specified a rate of £100 per hour so we wouldn’t look to apply any other rate unless we thought Mr P’s freedom of choice was rendered meaningless.

In determining this issue, we look at whether other panel and non-panel firms are able to take on and work cases of a similar nature to Mr P’s at the rate set out by the policy. Amtrust have obtained advice on the type of claim Mr P was engaged in, including the value, complexity and nature of the claim. From the information they’ve provided I can see that it has been recognised that the claim was generally accepted to be complex. This accords with Mr P’s own assertion that his claim is particularly involved and requires a firm of Solicitors with relevant expertise to deal with it.

Notwithstanding this, Amtrust have said at least three of their panel firms could take on the case for the hourly rate set out in their policy. Amtrust have also provided information that supports that at least three non-panel firms have also worked similar employment disputes at the same hourly rate. I appreciate Mr P is unhappy that he hasn’t seen this evidence, but I don’t think he had to. It’s up to us as a Service to satisfy ourselves that the evidence we are

considering is compelling and, in this case, I think it is. Equally it is not for Mr P to determine the competence of those firms.

I realise Mr P wasn't happy with the initial panel firm instructed by Amtrust to assess the merits of his claim but looking the reasons for this, this appears to be because the Barrister his own Solicitors instructed disagreed with the merits assessment conducted by that firm. But as acknowledged by Mr P's Barrister, that panel firm's assessment appeared to be based on an assessment of very limited papers, rather than the full information available to the Barrister. So, I'm not satisfied that this meant that the panel firm Amtrust instructed to consider the merits of the claim meant that they weren't reasonably competent to deal with the claim. Rather that their assessment of merits was based on limited papers. And given that Amtrust have been able to demonstrate that various panel and non-panel firms of Solicitors were available to take on a case like his for £100 per hour plus VAT, I'm not satisfied that his freedom of choice was rendered meaningless here. Because of this I don't think Amtrust treated him unfairly by refusing to pay the fees his Solicitors were charging him directly. It's important to note that the agreement Mr P entered with those Solicitors was entirely separate from Amtrust and Amtrust did not agree to those costs. So, whilst I understand why he might have preferred for them to be funded at the rate they were charging him, there was no obligation on Amtrust to pay for this for the reasons I've mentioned.

Overall, the evidence I've seen supports that other panel and non-panel firms can take on cases similar to Mr P's at the rate offered by Amtrust. In addition, I've seen nothing that supports that the firms Amtrust have referred to weren't able to competently represent Mr P in his claim. Those firms might not be Mr P's preference for the reasons he's set out, but it doesn't mean that legal representation at the rates offered wasn't available to him. And I'm not satisfied that Amtrust needed to push for their appointment. Given the nature of the correspondence between the parties, it's clear to me that Mr P simply wanted his own Solicitor's costs funded at the rate they were charging him and was continuing to pursue his claim through them. As such I don't think Amtrust needed to do anything more here.

Amtrust offered to pay Mr P's own Solicitors the "*Maximum Amount Payable*" and for Mr P to top up the remainder of the costs he's agreed to pay them. I don't think that's unreasonable in the circumstances. That said I can see that Mr P's own Solicitor did sign terms of appointment with Amtrust for the payment of their fees at £100 per hour plus VAT from 14 February 2025. Whilst that's right I think it's fair for Amtrust to fund Mr P's Solicitor's fees at the rate offered from the time they established his claim had reasonable prospects of success until it was concluded. I make that determination on the basis that the question of funding and the date on which it ran from remained in dispute between the parties until this determination.

I turn now to Mr P's dissatisfaction with the assessment of the merits of his claim by Amtrust's panel firm. I have addressed why I think that assessment was deficient in this case- namely because it was based on limited papers. And I think Amtrust could have done more to ensure that everything available in respect of the claim at that time was sent to their panel firm to review. In this case Mr P supplied a Barrister's opinion setting out why the assessment of the claim was wrong in response to the view that not all of his claims had reasonable prospects of success. Amtrust have argued that they didn't request this, and the costs of that Barrister were particularly high and could have been limited had they been involved in the decision to challenge the panel firm's opinion. I understand why they've said this, but I also think Amtrust ought to have reasonably asked for all of the up-to-date evidence available in the case before obtaining an opinion on prospects. And it looks like Mr P's Barrister had in any event been instructed to amend his claim to ensure it fully encompassed everything he was seeking. So, I think it's reasonable that he sought to obtain an opinion on the merits of his claim more generally at the same time. And given that meant

that the entirety of his claim was within cover and he'd been able to establish this (irrespective of Amtrust not asking him to do so by way of a Barrister's opinion), I think these fees should be reimbursed to him.

I will now address whether interest is payable on the amounts I have directed are payable by Amtrust here. I appreciate that Amtrust did offer to pay Mr P's costs at £100 per hour from the outset but that the matter continued to remain in dispute between the parties. I can also see that Mr P was repeatedly expressing considerable distress in relation to his financial circumstances and incurring legal costs irrespective of this. Whilst Amtrust weren't responsible for Mr P's agreement to pay his Solicitor's costs in full, the fact that he has done so has also meant that he is now out of pocket. I know that Amtrust's payment of those fees would not have been until the conclusion of the claim but given I have directed that those costs are now payable from the point at which prospects were established as part of this decision and Mr P is out of pocket, having funded those costs, it follows that Amtrust should pay him interest at 8% per year simple on these costs from the time they were paid, until he is reimbursed by them. For the same reason this also applies to the sum he funded in respect of his Barrister's fees incurred in challenging the merits assessment of their panel firm.

Finally, I can see that Amtrust haven't yet considered Mr P's costs or paid him anything in terms of reimbursement despite his Solicitor agreeing to the £100 per hour hourly rate in February 2025. Given Mr P's very extreme financial circumstances and health difficulties he's evidenced, I think Amtrust could have done something more to help alleviate the problems he was experiencing, at least by releasing him a payment of some kind pending detailed assessment at conclusion. The fact that no consideration was given to this or anything else that might have assisted him sooner, leads me to conclude that Amtrust should pay him some compensation in recognition of this. I've set out the amount I think is appropriate here which is commensurate with awards we might make in similar circumstances.

In closing, I wish to acknowledge Amtrust's submissions about the proportionality of Mr P's claim given the settlement amount he accepted compared to the costs he's incurred. They've questioned if he would have incurred the costs he did had he not been seeking to rely on his legal expenses insurance policy to cover him. Without full submissions from both parties on this point I can't address the issue fairly. But I have directed that Amtrust should only pay Mr P's reasonable and necessary costs in line with the policy terms. That's because that is all Mr P would have been entitled to under the policy in any event.

### **Putting things right**

Amtrust should:

- Reimburse Mr P for any reasonable and necessary Solicitor's costs he's incurred since his claim was accepted to have reasonable prospects of success at the rate of £100 per hour plus VAT.
- Reimburse Mr P for his Barrister's fees incurred in challenging their panel firm's assessment of the prospects of his claim or discharge these to his Solicitors depending on who paid these.
- Pay Mr P interest at 8% per year simple on the sums set out above, from the time they were paid by him, until he is reimbursed. If he has not paid these sums, he will not be entitled to interest.
- Pay Mr P £250 in compensation for the distress and inconvenience caused to him by Amtrust's failure to consider and discuss ways in which they might alleviate the considerable impact of the problems he was facing when they had already accepted

they would be prepared to at least subsidise his claim in line with the “*Maximum Amount Payable*” under the policy.

**My final decision**

I uphold Mr P’s complaint and direct AmTrust Specialty Limited to put things right as I’ve set out above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr P to accept or reject my decision before 13 January 2026.

Lale Hussein-Venn  
**Ombudsman**