

The complaint

Mr R complains that AmTrust Specialty Limited has unfairly declined a claim under his legal expenses insurance (“LEI”) policy.

Where I refer to AmTrust, this includes the actions of its agents and claims handlers for which it takes responsibility.

What happened

The detailed background to this complaint is well known to both parties, so I’ll only summarise the key events here.

- In 2024, Mr R made a claim under his LEI policy to pursue an action against his employer for discrimination and detriment relating to making a protected disclosure.
- AmTrust subsequently declined the claim on the basis that its panel solicitors weren’t satisfied it enjoyed reasonable prospects of success – which is a requirement for cover under the legal expenses policy.
- Mr R was unhappy with this decision and raised a complaint, which he brought to our Service. He says, in summary, that:
 - AmTrust refused to provide the name and qualifications of the lawyer who provided the prospects assessment.
 - Amtrust said he must provide a supportive barrister’s opinion if he wanted to challenge the decline of his claim.
 - His legal claim went on to settle, which shows it enjoyed reasonable prospects of success.
- Our Investigator didn’t uphold the complaint. She was satisfied AmTrust were entitled to rely on the legal advice it had obtained regarding prospects, it had handled the claim in accordance with the policy terms and hadn’t treated Mr R unfairly.

As Mr R didn’t agree with our Investigator, the complaint has been passed to me to decide.

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’ve reached the same outcome as our Investigator, and for broadly the same reasons. Before I explain why, I wish to acknowledge the parties’ submissions in respect of this complaint. Whilst I’ve read them all, I won’t comment in detail on every single point that has been made. Instead, I’ll focus on the key points that are relevant to the outcome I’ve reached. That’s in line with our remit, which is to resolve complaints promptly and with minimal formality.

The Financial Conduct Authority's (FCA) Insurance Conduct of Business Sourcebook (ICOBS) requires businesses to handle claims promptly and fairly, provide information on the claim's progress, and to not unreasonably reject a claim. I've kept this in mind when considering Mr R's complaint.

The terms and conditions of Mr R's LEI policy says cover is available provided that a claim enjoys prospects of success. This is defined as a *"51% or greater chance of winning the case and achieving a positive outcome"*.

This is a requirement of virtually all legal expenses policies, and we don't think it's unfair. Court action can be expensive. A privately paying customer wouldn't want to bear the cost if advised it's unlikely to succeed. And we wouldn't expect a legal expenses insurer to either.

Where an insurer has declined or withdrawn cover as a result of insufficient prospects of success, it isn't for us to evaluate the merits of the underlying claim. Instead, we look at whether the insurer has acted fairly. As long as they've obtained advice from suitably qualified lawyers, we won't generally question their reliance on that advice, unless we think it was obviously wrong or based on factual mistakes.

In this case, AmTrust obtained the advice of a panel firm. And they were of the opinion that, based on the information available, the claim didn't enjoy prospects of at least 51%. They estimated prospects at 10-20% for discrimination and 20-30% for detriment relating to making a protected disclosure. So, the policy terms and conditions hadn't been met.

Having considered the legal assessment, I'm satisfied it's properly written, well-reasoned, and not obviously wrong. I'm aware Mr R is unhappy he wasn't provided with the name and qualifications of the author. I'm not persuaded he's entitled to this information but I can assure him I've satisfied myself that it's been obtained from a suitably qualified lawyer. I haven't seen anything to persuade me that AmTrust shouldn't have relied on it.

Rather it was up to Mr R to obtain a contrary legal opinion on the merits of his claim, at his own cost, if he'd wanted to challenge this further. I can't see that it did so. He did send AmTrust a letter from his solicitors with their advice on the claim, but it didn't comment on whether it had prospects of success and what chance he had of winning in percentage terms. So this didn't show AmTrust that his claim satisfied the policy terms.

Mr R says AmTrust insisted he obtain a barrister's opinion, and he didn't want to spend £1,000 on it. But looking at Amtrust's letter declining Mr R's claim, it's clear that one of the options available to him was to obtain a legal challenge from a solicitor of his choice. He needed only to have asked his solicitor to comment on prospects of success in percentage terms to provide a sufficient legal challenge.

I appreciate Mr R's employer settled his claim before he issued it in court. He says this demonstrates it enjoyed reasonable prospects of success. But I don't agree. An employer may opt to settle a claim out of court for a number of reasons; often because it can be more cost effective than paying for legal representation to defend the case. Furthermore, the panel solicitors didn't say Mr R had no chance of winning his claim. They said he had 10-30% chance; it just didn't meet the threshold for policy cover which is 51%.

Based on the information provided, I'm satisfied AmTrust has handled Mr R's claim in accordance with the LEI policy terms and he hasn't been treated unfairly. So I'm not directing it to do anything further.

My final decision

For the reasons I've explained, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 24 November 2025.

Sheryl Sibley
Ombudsman