

The complaint

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

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

What happened

I issued a provisional decision in respect of Mr L's complaint in which I said:

"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 don't uphold Mr L's complaint. Before I explain why I wish to acknowledge both his strength of feeling about the matters he's complaining about and the very detailed submissions he's made. Whilst I've read everything he's 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. In this decision, I'll focus on the crux of Mr L's complaint, namely whether Amtrust treated him unfairly. I've set out my findings under the headings below.

Freedom of Choice

Mr L is unhappy with the appointment of the two panel firms in this case. He feels he should have been entitled to his own choice of Solicitor.

I have been provided with a copy of Mr L's policy. It says:

"If your legal claim has prospects of success will choose an appointed representative to act on your behalf.

The arrangement we have with our appointed representatives does not restrict their independence and you will at all times receive the best advice for you.

You may choose another representative if there is a conflict of interest with a representative appointed by us, or there is an inquiry or legal proceedings are about to be commenced."

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. Mr L's claim wasn't, as far as I can see, at a point where it had been litigated or was about to be when it was put to the panel firms. Rather those firms were simply trying to establish whether the claim had reasonable prospects of success, as required by the policy.

Mr L was unhappy with the first panel firm's assessment and was concerned about their involvement in his claim as he'd raised a complaint about them before. So, although the conclusion they reached was that his claim did not have reasonable prospects of success, Amtrust agreed to pass the matter to a second panel firm to consider instead. In doing so, I'm not satisfied that Mr L's dissatisfaction with the first panel firm amounted to a conflict of interest in the way we would consider it. The fact that they'd previously received a complaint from him coupled with the fact that he didn't agree with the assessment they'd reached, including understanding his claim, wouldn't in our view amount to this. As such he wasn't entitled to a lawyer of his own choice at this point.

Nonetheless Amtrust agreed to instruct the second panel firm in this matter to consider things afresh. That panel firm also concluded Mr L's claim didn't have reasonable prospects of success. I appreciate Mr L didn't agree with this and felt this firm didn't understand his claim either but that again isn't something that would amount to a conflict of interest in our view, such that he freedom to choose his own lawyer arose at this stage. A conflict of interest is usually something the panel firm would identify, like where they've acted for the other party in claim in the past. That wasn't the case here. I know Mr L says that a Solicitor previous employed by the first panel firm was employed by the second one, but that also makes no difference here. It wouldn't in our view amount to a conflict of interest, such that he was entitled to his own choice of Solicitor as a result.

Prospects of success

Mr L's policy, like virtually all other before the event insurance policies requires there to be reasonable prospects of success. We don't think this is unfair. Court action can be expensive. A privately paying customer wouldn't want to bear the cost if advised it is unlikely to succeed. We wouldn't expect a legal expenses insurance to fund claims in these circumstances either.

Where an insurer has declined funding in such a case, it isn't for us to evaluate the merits of the underlying claim. Instead, and as the investigator explained, we look at whether the insurer has acted fairly. So long as they have got 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 both panel firms concluded that the claims Mr L wanted to bring did not have reasonable prospects of success. But as Mr L didn't think either firm had understood his claims and that their advice was based on factual mistakes, Amtrust referred the matter to a Barrister to consider in finality. I think this was more than reasonable in the circumstances. Ordinarily we'd expect a policyholder to provide an alternative fully reasoned opinion from a lawyer of equal standing that supports the merits of their claim before we would say that Amtrust should review things again. Amtrust agreed to do this on two occasions without that advice being provided. For that reason, I'm satisfied that Amtrust acted reasonably.

The Barrister's Opinion

The Barrister in this case concluded that Mr L should either apply back to Court to enforce the terms of a historic settlement agreement with the third party or start a new claim for breach of contract. In both cases Amtrust said they couldn't offer cover here because the first option was in relation to a matter that fell before cover started and the second was for something that the policy wouldn't cover at all.

I appreciate the Barrister's opinion is at odds with what the panel firms advised here and that our investigator felt that Amtrust should have picked up on the fact that Mr L would need to pursue a claim for something that fell before cover started much sooner. But I don't agree. Two panel firms were instructed before the Barrister. Neither of those firms provided the same advice as the Barrister. Amtrust are not legal professionals so they weren't in a position to formulate what Mr L's claim would be against the third party. And given two separate firms of Solicitors hadn't identified the issue the Barrister had, I don't think it's reasonable to have expected Amtrust to either. So, whilst it's unfortunate that Mr L now finds himself in a position where he needs to submit his claim to a previous insurer, that's not something I think Amtrust are responsible for. Ultimately the advice Amtrust received was that his claims didn't have reasonable prospects of success and then that the claims he wanted to make were not covered by the policy. Whilst it took a while to establish this, I don't think that means Amtrust did something wrong. They aren't responsible for the advice received by their panel firms. If Mr L remains unhappy with that advice, then he's entitled to complain to those firms directly or through the Legal Ombudsman. It follows that I don't think Amtrust need to compensate Mr L for the time it has taken for them to confirm they aren't able to cover the claim because this followed a Barrister's opinion, for which there was no necessity at an earlier stage.

When reaching my conclusions, I appreciate that Mr L doesn't agree that his claim is one that isn't covered by Amtrust. The policy Mr L had in place does not provide cover for a claim where the date of the incident arises before the start of the policy. "Date of incident" is defined as "The date of the event; or the date of the first event where there is more than one event arising from the same cause..." In this case the course of action the Barrister advised of was to enforce a settlement agreement dated 25 February 2019. Given the breach of that agreement took place before the policy was in place- namely prior to 2021, the matter isn't one that reasonably falls within cover. I say so because Mr L's claim is for problems arising out of something that happened either before the policy was in place (in 2010) or shortly after the settlement agreement was entered into. Either way these matters are pre inception. As such it was correct for Amtrust to direct Mr L back to his legal expenses' insurer that provided cover for him for the relevant period. From what I've seen, Mr L's policy doesn't contain cover for contract disputes either so if he wanted to start a new claim for breach of contract, Amtrust were right to say it wouldn't be covered."

I asked both parties to provide any further comments or evidence for me to consider. Amtrust has not responded but Mr L has. He has made considerable submissions in response to my provisional findings. I won't repeat them here, but I have read and considered them all when determining the final outcome of his complaint.

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 remain of the view that Mr L's complaint should not be upheld for the reasons set out within my provisional findings as there's nothing within Mr L's further submissions that makes me think those conclusions were wrong.

When determining a complaint, we won't necessarily recite the entire chronology of the claim or comment on every aspect of the claims journey that a policyholder is unhappy with. That's not our role. Rather it is to consider whether a customer has been treated unfairly, such that an insurer needs to do something further to put things right. I appreciate that Mr L doesn't agree with me in respect of this and wanted me to comment on each individual concern he had about his claims journey. For the reasons I've explained, I won't be doing so.

Much of Mr L's submissions are about the facts of his underlying claim as well as the evidence he presented in respect of it. He's also repeated many of the points he's made in previous correspondence including his dissatisfaction about the conduct of the panel firms instructed by Amtrust. Whilst I understand his concerns, I can't comment on the actions of the panel firms as they fall outside of my remit. Equally the facts of his underlying claim make no difference to my findings for the reasons I have previously given.

Mr L has said there are factual inaccuracies in my provisional findings. I have considered his views in respect of these. He says that he was not unhappy with the appointment of the two panel firms and did not think he should be entitled to his own choice of Solicitor. But I don't think that's right. It's clear to me that after the first panel firm were instructed, Mr L expressed his dissatisfaction to Amtrust about this and asked to use his own Solicitor. Equally and from what I've seen Mr L also expressed he was unhappy with the second panel firm instructed by Amtrust, which is what led to the instruction of the Barrister in this claim. My findings about whether his freedom to choose his own Solicitor arise out of this. I don't however make reference to him actually doing so as Mr L asserts.

Mr L has said that Amtrust defaulted on their contract of insurance in failing to provide him with legal insurance and deal with the damage to his property which is a service he paid for. I don't agree. For the reasons I've explained, legal expenses insurance, like all insurance policies, is subject to terms and conditions. In my provisional decision I've explained how these applied to Mr L's claim and that Amtrust applied them fairly. He wasn't entitled to cover to cover for his claim to necessarily be dealt with in the way that he wanted which I think accounts for the difference in his expectations from Amtrust versus the service they provided him with.

Overall and for the reasons I've previously set out, I haven't seen anything to support that Amtrust treated Mr L unfairly.

My final decision

For the reasons set out above, I don't uphold Mr L's complaint against AmTrust Specialty Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 13 November 2025.

Lale Hussein-Venn
Ombudsman