

## **The complaint**

Ms M and Mr S are unhappy with what AmTrust Specialty Limited did following a claim Ms M made on their legal expenses insurance policy. Although Ms M and Mr S are joint policyholders as the claim and complaint relate to Ms M I'll mainly refer to her in this decision.

## **What happened**

In May 2024 Ms M sought assistance from her policy with an employment dispute. Amtrust asked for more information about the claim and said the policy didn't provide cover where the dispute was still being dealt with through an employer's internal procedure. In August Ms M provided details of a claim she'd now lodged with the Employment Tribunal (ET). After obtaining further information Amtrust asked a panel firm to assess whether the claim had reasonable prospects of success (a requirement of the policy). Having considered additional evidence from Ms M the firm advised in mid-October they didn't think it did. Amtrust said it wouldn't be providing funding for the claim and outlined the options available to Ms M if she disagreed with the legal advice.

In response to the complaint Ms M made Amtrust didn't agree information about the claim had been disclosed to anyone other than the panel firm (which Ms M had agreed to when making her claim). It accepted the prospects assessment had taken longer to produce than it initially advised but didn't think the overall timeframe was unreasonable. And it reiterated the options open to Ms M if she wanted to challenge that assessment.

Our investigator agreed the prospects assessment was one Amtrust was entitled to rely on and it had correctly outlined to Ms M what she could do if she wanted to challenge that. She didn't think there had been any unreasonable delay by Amtrust in progressing the claim. And she didn't think there had been any failings in the sharing of Ms M's personal information.

Ms M didn't agree and asked for an Ombudsman to review matters. She also asked if she could have until 31 October 2025 to provide further comments. Our investigator agreed to that extension but no more comments from Ms M were received. So I need to reach a final decision based on the available evidence.

## **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.

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 appreciate this has been a difficult and challenging time for Ms M. I was sorry to learn of the impact on her of what has happened. And I've taken into account the detailed comments she made prior to our investigator reaching her view. But I've focused in this decision on those points I consider are material to the key question I'm considering; whether there were failings by Amtrust in dealing with the legal expenses claim Ms M made.

I've looked first at the terms and conditions of her policy. That does provide cover for *"Standard advisers' costs to pursue a legal action brought before an Employment Tribunal...against an employer or ex employer for breach of your contract of employment as an employee"*. But it doesn't cover claims for the costs of *"any disciplinary investigatory or grievance procedure connected with your contract of employment"*.

It's not clear from Ms M's initial claim form whether she'd completed all of her employer's internal procedures. So I think it was reasonable Amtrust highlighted that exclusion in its response to her. And Ms M didn't then provide further information in support of her claim until August 2024. But, as by then it was clear she was progressing the claim with the ET, the costs of that were something her policy could, in principle, cover.

However, the policy also says *"there must always be a chance that your case can succeed. That chance must remain above 50% based on an independent assessment"*. It goes on to explain *"at any time we may, but only when supported by independent legal advice, form the view that you do not have a more than 50% chance of winning the case and achieving a positive outcome. If so, we may decline support or any further support"*.

Ms M suggests that term isn't in itself reasonable as it enable an insurer to avoid its contractual obligations and deprive her of legal representation at an early stage of proceedings. I don't agree. The requirement for a prospects assessment is part of the insurance contract she and her insurer entered into. And this requirement is common to legal expenses policies like this. I don't consider it unreasonable. Legal action can be expensive and it's unlikely an uninsured person would want to bear the cost of running a case if advised it isn't likely to succeed. An insurer isn't in a different position.

I don't think it was unfair or unreasonable of Amtrust to say the prospects requirement needed to be met in this case. But as an insurer isn't a legal expert it isn't 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 I think Amtrust acted correctly (and in line with the policy terms) in asking for this to be assessed by a panel solicitor.

The panel firm said in October 2024 they didn't believe Ms M's claim had reasonable prospects of success. I've reviewed that opinion which in my view is properly written and reasoned and from someone qualified to provide it. It was produced by a qualified solicitor and I understand was checked by the partner in charge of the panel firm's employment law team. I don't think there was any reason Amtrust shouldn't have relied on that when concluding Ms M's claim didn't have reasonable prospects of success.

Ms M says her claim has been accepted by the ET with a two week hearing scheduled and that shows the assessment carried out by the panel firm was wrong. But while the ET has accepted the claim it does so primarily on the basis the correct process has been followed and relevant time limits complied with. I don't think it's acceptance of the claim shows it was unreasonable of Amtrust to rely on the panel firm's assessment of prospects. And the panel firm didn't conclude Ms M's claim had no prospect of success; it simply found it was unlikely to win. Amtrust explained to Ms M what she would need to do if she wanted to challenge that assessment which was to provide new information not previously considered or obtain a legal challenge from her own solicitors. In the absence of that information I don't consider there was further action Amtrust needed to take.

Ms M says the onus is an insurer to show the prospects requirement isn't met. As this is a condition for cover to be provided that is the case but I've already explained why I think

Amtrust has shown it wasn't met here. Ms M suggests Amtrust said a barrister's opinion would then be required which it refused to fund. That isn't what happened. Amtrust made clear if Ms M was able to provide a supportive legal opinion of her own it would then arrange and pay for a barrister's opinion to be obtained (and would accept the claim if that was positive on its prospects of success).

Ms M also says the requirement for a prospects assessment breaches equality law. I think she's therefore suggesting Amtrust's actions are in breach of the Equality Act 2010. I've taken that into account given it's relevant law – but I've ultimately decided this complaint based on what's fair and reasonable. If Ms M wants a decision that Amtrust has breached the Equality Act she'd need to go to court.

The Act says where a service provider's provision, criterion or practice puts disabled persons at a substantial disadvantage compared to those who don't have a disability they should take reasonable steps to alleviate the disadvantage. That may apply to Ms M but even if it does she has been able to access Amtrust's service; she made a claim on her policy. Her concern is with its decision to turn that down because it doesn't meet the requirements of that policy. But I've already explained why I think it acted fairly and reasonably here.

And I don't agree the requirement for a claim to have prospects of success excludes whistleblowers as a group from the cover offered by this policy either. It imposes the same requirement on a claim involving whistleblowing as it does on any other; that the claim is likely to be successful. And Ms M's claim as it relates to whistleblowing is specifically considered in the legal assessment which gives reasons for why she is unlikely to be successful at tribunal with either that or the other claims she's making.

I've gone on to consider whether there was any significant delay by Amtrust in progressing the claim. I don't think there was. Ms M says it took six months from the claim being submitted for it to be declined. But that wasn't because of delay on Amtrust's part. It asked Ms M for further information about the claim following her initial submission and she didn't then contact it again until August (by which time she had progressed matters to the ET).

It did then take longer than Amtrust anticipated for the prospects assessment to be completed but I don't think the timeframe for that was unreasonable given the nature of the claim Ms M had made. In any event any delay here would be the responsibility of the panel firm not Amtrust. It did appropriately chase up progress with the panel firm when Ms M expressed concern about the time taken for the assessment to be completed.

Ms M also believes her personal data was shared by Amtrust without her consent and with parties outside the UK. However, she hasn't provided any further evidence in support of that contention. And having reviewed Amtrust's file the only information I can see it shared was with the panel firm to assist with their assessment of prospects of success. I think it was reasonable Amtrust did that. When making her claim Ms M was required to agree that information about her claim "*can be forwarded to an appropriate third party but solely for the purpose of assisting or dealing with the claim*". That's what Amtrust appears to have done in this case.

Finally, Ms M says there was delay by Amtrust in responding to the complaint she made. Complaint handling isn't one of the activities our rules allow us to consider. So I can't look at in isolation. I could look at it when thinking about the overall customer service Amtrust provided but I could only make an award for complaint handling if I was also doing so for something related to customer service more generally. That isn't the case here. So I won't be considering this issue further

**My final decision**

I've decided not to uphold this complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Ms M and Mr S to accept or reject my decision before 27 February 2026.

James Park  
**Ombudsman**