

## The complaint

Mr L complains that AmTrust Specialty Limited failed to give correct information about the cover available under his legal expenses insurance 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 2022, Mr L made a claim under his legal expenses insurance policy, underwritten by AmTrust, to defend disciplinary action brought against him by a professional body with whom he held a membership. The professional body alleged Mr L had breached its code of conduct which constituted misconduct.

AmTrust instructed its panel solicitors who obtained counsel's advice on the merits of the claim. Counsel was of the opinion Mr L had 65% prospects of successfully defending the action brought against him.

Based on this advice, AmTrust accepted the claim and instructed its panel solicitors to represent Mr L under the terms of the policy. It informed both Mr L and the solicitors that the policy's indemnity limit was £100,000.

During the course of the claim, AmTrust were regularly updated by the solicitors who sought prior authorisation for the costs they were incurring including counsel's and expert's fees. AmTrust authorised the costs and set a reserve of £52,500 for Mr L's legal costs and disbursements.

In late 2024, AmTrust were contacted by the solicitors who queried whether the policy covered adverse costs should Mr L be unsuccessful in his defence. AmTrust checked the policy terms and confirmed that it did cover this, however it noted the correct limit of indemnity was £50,000. It informed both Mr L and the solicitors of its mistake and advised that any costs incurred above this limit would be Mr L's responsibility.

Mr L was unsuccessful at a final hearing in early 2025. He was found guilty of misconduct and banned from being a member of the professional body for a period of two years. He was ordered to pay 50% of the professional body's legal costs which amounted to approximately £23,000.

As the policy's limit of indemnity had been exhausted, Mr L was liable for his solicitor's costs and disbursements in excess of £50,000 and the adverse costs award.

Mr L didn't think this was fair, as AmTrust had told him he was covered for up to £100,000. He sought the advice of a solicitor, who wrote to AmTrust explaining how its mistake had

prejudiced Mr L's position. As AmTrust didn't alter its stance on costs, Mr L raised a complaint.

AmTrust upheld Mr L's complaint and offered £1,000 compensation for the distress and inconvenience its mistake had caused. But Mr L didn't think this went far enough to put things right, so he brought his complaint to our Service.

Our Investigator upheld the complaint. He said Amtrust should pay the full legal costs Mr L had incurred in defending his claim which – as the panel solicitor had agreed to waive their costs incurred over the £50,000 limit – was the adverse costs of approximately £23,000. But he didn't think it needed to increase its offer of compensation nor was it obliged to cover any further costs in relation to an appeal.

As AmTrust 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.

It's not in dispute that AmTrust gave Mr L and the panel solicitor the incorrect limit of indemnity. AmTrust accepts it said the limit was £100,000, when it was actually £50,000. So I don't need to decide whether AmTrust has done something wrong – it has. What I need to decide is what it needs to do to put things right.

It's not our role to fine or punish businesses. So where a mistake has been made – like giving a customer incorrect information or accepting a claim that should've been declined – we wouldn't hold a business to that mistake and direct them to honour what they said. Instead, we expect the business to put the customer back in the position they would've been in had the mistake not been made.

That's difficult in this case, because Mr L has been defending disciplinary action brought against him for approximately two years on the understanding that he had a limit of indemnity of £100,000 which would cover both his costs, and the other side's costs should he lose. Not only that, but the panel solicitors have pursued the claim based on that understanding as well. It wasn't until a matter of months before the final hearing, when the majority of legal costs had already been incurred by both sides, that Mr L was informed his indemnity was only half that amount.

Throughout the course of the claim, I can't see that Mr L was kept informed about what costs were being incurred. I assume that was because the solicitors didn't know Mr L would be personally liable for any of them. He didn't have any knowledge that his solicitor's costs and disbursements had exceeded £50,000 until after it was established he only had £50,000 worth of cover. So Mr L wasn't given the opportunity to monitor the costs being incurred or question how his indemnity was being spent. And I think it's likely he would've done had he known he'd be on risk once the indemnity limit was exhausted, especially given the significant costs incurred on expert's advice.

Instead, AmTrust has agreed to the panel solicitor's requests for funding throughout the claim without question, which has essentially committed Mr L to costs over and above £50,000 without any level of scrutiny over the costs being agreed to. AmTrust didn't ask the panel solicitor's whether an expert was needed or to find a cheaper quote than the one it had which was for £10,000.

As our Investigator has said, we can't say with any certainty what Mr L would've done had he been given the correct limit of indemnity at the outset. But I'm persuaded, on balance, there would've been additional emphasis on the costs being incurred and the implications of this. Different decisions could've been made to ensure costs remained below the limit, with enough indemnity set aside to cover the other side's costs.

I'm mindful that, if the defence was unsuccessful, the outcome of the disciplinary action brought against Mr L would only ever have been a ban on being a member of the professional body for a period of time. Mr L had already ended his membership, and he'd been clear that he didn't need to be a member in order to continue in his employment. So I think there might have been more of an appetite to mediate / settle this claim, rather than defend it so strongly, had Mr L known he could be personally liable for up to £50,000.

Overall, I'm satisfied Mr L had a reasonable expectation that he was covered for £100,000 because of information he was given by Amtrust. He can't be put back in the position he would've been in 2022 because decisions have been made on his claim based on the level of cover he and the solicitors thought he had. And costs have been incurred by both sides following those decisions. I'm satisfied Mr L has acted differently – and to his detriment – as a result of the error made about the indemnity limit. It wouldn't be fair for him to suffer a financial loss as a result of this.

For that reason, I'm persuaded it's reasonable for AmTrust to honour its mistake. By this I mean that it should pay Mr L's reasonable and necessary legal costs incurred in defending his claim and the other side's legal costs awarded against him. My understanding is the only amount outstanding to pay is the adverse costs. If Mr L has been required to pay these himself, AmTrust should pay interest.

AmTrust has offered to pay £1,000 compensation to recognise the distress and inconvenience it has caused Mr L. And I'm satisfied that's reasonable in the circumstances.

And finally, I'm not persuaded AmTrust are obligated to cover any further costs on this claim, including those of Mr L's appeal, as his limit of indemnity under the policy is now exhausted and Mr L was aware of this before commencing any further action.

### **My final decision**

For the reasons I've explained, I uphold this complaint and direct AmTrust Specialty Limited to:

- pay the adverse costs awarded against Mr L following the outcome of the disciplinary action. If Mr L has been required to pay for these himself, AmTrust should add 8% simple interest from the date he paid them to the date he's reimbursed.
- pay the £1,000 compensation offered for the distress and inconvenience caused, if AmTrust has not already paid it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 16 February 2026.

Sheryl Sibley  
**Ombudsman**