

## **The complaint**

Ms R complains AmTrust Speciality Limited has handled a legal expenses insurance (LEI) claim unfairly.

Any reference to AmTrust includes the actions of its agents.

## **What happened**

The circumstances of this complaint are well known to both parties, and as the Investigator detailed what happened in their view, I won't repeat events here. Instead, I will focus on the 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.

Our Service is an alternative, informal dispute resolution service. Whilst the parties have provided lengthy submissions, my decision won't reflect the same level of detail. This isn't intended as a discourtesy – it simply reflects the informal nature of our Service. Whilst I may not address every point raised as part of this complaint, I have considered them.

The crux of Ms R's complaint is she considers AmTrust to have caused avoidable delays and distress by not approving funding for her legal claims at the earliest opportunity. Ms R says AmTrust and its Counsel failed to take account of independent expert advice which she says supported her legal claim had prospects of success.

Ms R also says AmTrust reneged on its decision to approve funding for alternative dispute resolution (ADR). Ms R says this change occurred after she'd already incurred legal costs which she says she did on the understanding AmTrust would reimburse these.

Ms R adds there were unacceptable delays in obtaining Counsel's opinion. And that overall, AmTrust's handling of the claim was poor, resulting in a catastrophic financial and emotional impact on her and her mother. I'll address each in turn.

### *Prospects of success*

The policy terms say that to be covered, the claim must have reasonable prospects of success. And the policy defines this as:

*“You only have cover under this policy where there is more than 50% chance of winning the case and achieving a positive outcome.*

*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. Examples of a positive outcome are:*

- a) *Being able to recover the amount of money at stake;*
- b) *Being able to enforce a judgement;*
- c) *Being able to achieve an outcome which best serves your interests.”*

It is standard practice to include a requirement that cover will only be provided if a claim is likely to be successful. The definition of prospects of success means Ms R must show she has a reasonable chance of not just winning the case but of recovering damages from the other party. I find that's reasonable as it wouldn't be fair to expect an insurer to cover a claim if it's unlikely anything will be recovered from the other party. It's also standard practice for insurers to obtain legal advice about the prospects of success, and it's entitled to rely on that advice unless it's obviously wrong.

AmTrust referred the legal claim to Counsel to advise on Ms R's prospects of success in a service charge dispute. Counsel concluded Ms R's legal claim didn't meet the prospects of success test set out in the policy. Based on this advice, AmTrust refused cover.

Ms R challenged Counsel's opinion. I've seen Counsel specifically referenced in their second opinion on prospects of success they'd been provided with new material to consider, but that it didn't change their previous advice.

On receipt of information from Ms R, AmTrust reverted to Counsel a further four times to obtain legal advice on Ms R's prospects of success in relation to various legal claims, including action against the freeholder of her building, and both the former and current owner of a neighbouring flat. These assessments were issued in June 2023, September 2023, January 2024 and March 2024. The assessments concluded there wasn't prospects of success.

Ms R considers the legal advice to be flawed, saying it overlooked key evidence. On balance, I'm satisfied AmTrust passed information Ms R provided to its Counsel for consideration – it seems Ms R also accepts information was shared. However, she doesn't think it was duly considered by Counsel, as if it were, she says prospects of success would have been found much earlier on.

Whilst it is Ms R's opinion prospects of success existed earlier on, it's not this Service's role to comment on the legal position. Unless the earlier advice was obviously wrong – meaning it was so wrong anyone would have realised it was wrong – Amtrust was entitled to rely on it. From what I've seen, I can't say with the certainty required that Counsel's opinion was obviously wrong – and that Amtrust therefore, couldn't rely on it. In saying this, it's important to state that I'm not judging the legal advice based on what might be known now, but what was known to AmTrust at the time. And the advice at the time was that her legal claims didn't have prospects of success and the insurer was entitled to rely on that advice.

Ms R has recently mentioned AmTrust obtained a seventh opinion from the same Counsel which says there is now prospects of success. I haven't seen that and it doesn't form part of this complaint as it happened after AmTrust's final response in May 2024. If following this latest advice, AmTrust hasn't changed its mind on whether there were prospects of success earlier on, Ms R can take this up with AmTrust. And if she's unhappy with its reply, she can bring it to this Service as a new complaint.

But, based on the events I'm considering, I'm satisfied AmTrust was entitled to rely on Counsel's opinions. And as the legal advice at the time of its final response letter meant the claim didn't satisfy the legal expenses policy terms and conditions, AmTrust was entitled to refuse the claim.

### *ADR funding*

Ms R complains AmTrust approved funding for ADR in May 2023 but later revoked it. Ms R says she acted on this advice to her detriment as she incurred legal fees in the belief these legal costs would be reimbursed.

Ms R's solicitors contacted AmTrust in May 2023 and said:

*"I understand you are awaiting for Counsel's feedback and prospects. [...] my proposal was to undertake work in respect of whether or not to progress with mediation which could result in settlement. [...]"*

*Whilst I understand that you will require prospects overall of the case in terms of if it were to go to trial, the proposal here is to attempt to engage in ADR prior [...]"*

The same day, AmTrust replied saying:

*"I acknowledge the points raised regarding potential prejudice to the insured's position should action not be taken imminently, and therefore, to avoid further delay I can confirm we will be willing to retrospectively cover your firm's reasonable costs incurred on the work set out in your previous email if counsel's advice is sufficient for us to confirm policy cover, including confirmation of reasonable prospects of success."*

I'm not persuaded AmTrust's reply confirms funding for ADR. The email says it would be willing to retrospectively cover costs so long as Counsel's advice confirms there are reasonable prospects of success. So, I'm satisfied it makes clear cover is on the proviso Counsel's advice confirms reasonable prospects of success. So, I don't agree AmTrust agreed to and then revoked funding for ADR.

### *Delays and communication*

I sympathise with the very challenging circumstances Ms R – and her mother – have and continue to deal with. Her strength of feeling about these matters is clear. As the legal claim is to do with her home, I don't doubt she's under immense strain. And I'm mindful that this would be compounded by any sense of wrongdoing on the insurer's part.

I must determine whether AmTrust has acted fairly and reasonably, and whether its actions have caused avoidable distress and inconvenience beyond what can reasonably be expected while taking legal action. Keeping in mind that AmTrust isn't responsible for the difficulties which arise out of the legal claim itself.

Turning to the delays, I'm not persuaded AmTrust has caused avoidable delays to the extent Ms R says it has. Whilst Ms R considers AmTrust's decision to decline cover to be wrong – and therefore, to have caused avoidable delays to her legal claim - I don't agree. I say this because AmTrust was entitled to rely on Counsel's advice which said the claim(s) didn't have reasonable prospects of success. So, as it reasonably determined the claim didn't meet the policy terms and conditions, I find its position, that it hadn't caused avoidable delays by doing so, was fair and reasonable.

Whilst obtaining additional opinions from Counsel extended matters, AmTrust did this having been provided with new information from Ms R – which is what I'd expect it to do. And whilst it was no doubt disappointing for Ms R to be told each time that her legal claims didn't have reasonable prospects of success, I don't find that's AmTrust's fault as its claim decision was dependent on the legal advice it received which as I've said above, it could reasonably rely

on.

I also find, given the complex nature of Ms R's legal claims, it was reasonable for AmTrust to have sought further legal advice from the same barrister as they were familiar with the legal claim. To have instructed a different barrister would have likely delayed matters.

I do, however, agree things slowed whilst awaiting Counsel's advice, but I must keep in mind that AmTrust doesn't have control over how long Counsel takes to provide their opinions. However, there was an opportunity for AmTrust to chase matters between January and May 2023 whilst awaiting Counsel's third opinion on prospects. But even if Counsel's opinion had been obtained quicker, it wouldn't have changed things as ultimately, there wasn't prospects of success.

AmTrust accepts it did ask for information it already had on file and it's apologised for the frustration this caused. I find that's a proportionate response given I can't see the mistake it referred to caused detriment on Ms R's part beyond annoyance at having been asked to provide something which was already available.

So, when I consider the handling of the claim overall, I'm not persuaded AmTrust caused avoidable delays to such an extent, or that its communication fell so short, compensation is warranted in the circumstances.

Whilst I sympathise with the difficult situation Ms R is in, I must decide the complaint objectively, and having done so, I don't uphold it.

### **My final decision**

My final decision is I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms R to accept or reject my decision before 9 April 2026.

Nicola Beakhust  
**Ombudsman**