

The complaint

Mr G complains that AmTrust Specialty Limited unfairly declined a claim 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 July 2024, Mr G made a claim on his legal expenses insurance policy. He wanted to pursue legal action against his credit card provider for failure to honour a section 75 claim.
- AmTrust initially declined the claim. But after Mr G disputed this decision with a team manager, it was agreed the exclusions it had relied on didn't apply. So, in August 2024, AmTrust instructed its panel firm of solicitors to carry out a legal assessment.
- In September 2024, the panel solicitors provided their legal opinion which was that the claim didn't enjoy reasonable prospects of success and it wasn't proportionate to pursue – both of which are requirements for cover under the policy.
- Mr G provided further information. And, in October 2024, the panel solicitors confirmed they were now of the opinion that the claim enjoyed reasonable prospects of success. But they remained of the view that it wasn't proportionate given the value of the claim was £950 and the legal costs to pursue it would far exceed that.
- Based on this advice, AmTrust declined the claim. But it said if Mr G decided to pursue his claim in the small claims court, it would pay the issue and hearing fees.
- Mr G raised a complaint for several reasons, the crux of the matter being that he was unhappy his claim had been declined and the time it took AmTrust to reach this decision.
- AmTrust didn't uphold the complaint, so Mr G brought it to our Service. But our Investigator didn't think AmTrust had done anything wrong or unfair, so he didn't think it needed to do anything to put things right.

As Mr G didn't agree with our Investigator, the complaint was passed to me to decide. And I issued the following provisional decision.

My provisional decision

The terms and conditions of Mr G's legal expenses insurance policy say:

“Proportionality

We will only pay advisers’ costs that are proportionate to the amount of damages that you are claiming in the legal action. Advisers’ costs in excess of the amount of damages that you are able to claim from your opponent will not be covered.”

This is a requirement of virtually all legal expenses policies, and we don’t think it’s unfair. Court action can be expensive. A prudent privately paying customer wouldn’t want to bear the legal cost if it’s likely they would spend more in costs than what they would recover. And we wouldn’t expect a legal expenses insurer to either.

The amount of damages Mr G is claiming is £950. The panel solicitors are of the opinion the legal costs to pursue this matter would very quickly outweigh that amount. So, I’m satisfied the claim isn’t proportionate to pursue.

That said, the policy is clear it will cover proportionate costs. This means Mr G should’ve had the benefit of cover up to £950. And I can’t see he’s had that.

I appreciate AmTrust would’ve incurred costs in assessing Mr G’s claim and obtaining the legal assessments. And whilst they may have deducted these costs from his limit of indemnity, I don’t think it’s fair to factor them in when considering proportionality. I say this because, when considering proportionality, we look at the value of the claim compared to the cost of *pursuing* it – not assessing it.

For this reason, I don’t think AmTrust has fairly declined Mr G’s claim. Instead, it should’ve offered him legal funding for his claim up to £950 or, if it preferred, a bagatelle payment for that amount.

I appreciate Mr G has raised other concerns. In particular, he’s concerned about the definition of business use. But AmTrust hasn’t declined his claim due to any business use exclusion as far as I can see, so I don’t think this is material to the crux of the complaint and for this reason, I don’t intend to make a finding on this point.

Putting things right

I intend to uphold this complaint and direct AmTrust Specialty Limited to provide Mr G with funding under his policy to pursue his claim up to the value of £950. Alternatively, it can pay Mr G this amount as a bagatelle payment.

Responses to my provisional decision

Neither party responded to my provisional 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.

As neither party had any further submissions for my consideration, I see no reason to deviate from the outcome explained in my provisional decision.

My final decision

For the reasons I've explained, I uphold this complaint and direct AmTrust Specialty Limited to provide Mr G with funding under his legal expenses insurance policy to pursue his claim up to the value of £950. Alternatively, it can pay Mr G this amount as a bagatelle payment.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 26 January 2026.

Sheryl Sibley
Ombudsman