

## **The complaint**

Mr L complains about the way AmTrust Specialty Limited handled 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 October 2024, Mr L made a claim under his legal expenses insurance policy to pursue a dispute relating to his employment.
- AmTrust instructed its panel firm of solicitors to assess whether the claim enjoyed reasonable prospects of success – which is a requirement of cover under the policy. The advice received in November 2024 was that it did not.
- Mr L was informed that he could challenge the legal assessment by seeking a solicitor's opinion of his own. And if that was supportive, AmTrust would obtain a third and final opinion from a barrister.
- Mr L opted to obtain his legal challenge from a barrister. He said that, due to the amount of time the panel solicitors had taken to provide their assessment, he couldn't risk any further delays to his claim as his limitation date was fast approaching. He asked AmTrust if it would cover the cost of the advice, but it declined.
- In December 2024, Mr L provided AmTrust with a positive assessment from a barrister. Based on this, AmTrust agreed to accept the claim and sent its terms of appointment to Mr L's chosen solicitor.
- Mr L raised a complaint. In summary, he's unhappy with the amount of time it took AmTrust to accept his claim and he wants it to cover his legal costs retrospectively along with the cost of the barrister's opinion.
- AmTrust said it's entitled to rely on the legal advice it obtained from its panel solicitors, and it's not responsible for any delays they caused when assessing the claim. It agreed to cover Mr L's legal costs from the date it was provided with the positive legal assessment and it offered to contribute £500 towards the barrister's advice.
- Mr L wasn't happy with this outcome, so he brought his complaint to our Service. But our Investigator was satisfied AmTrust had acted in line with the policy terms and hadn't treated Mr L unfairly.

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

### **My provisional decision**

I've reached a different outcome to our Investigator. 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.

The terms and conditions of Mr L's legal expenses insurance policy says cover is available provided that a claim enjoys reasonable prospects of success. It defines prospects of success as *"51% or greater chance of winning the case or achieving a positive outcome"*.

This is a requirement of virtually all legal expenses policies, and we don't think it's unfair. Court action can be expensive. A privately paying customer wouldn't want to bear the cost if advised it's unlikely the claim will succeed. And we wouldn't expect a legal expenses insurer to either.

Where an insurer has declined or withdrawn cover as a result of insufficient prospects of success, it isn't for us to evaluate the merits of the underlying claim. Instead, we look at whether the insurer has acted fairly. As long as they've obtained 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, AmTrust obtained the advice of a panel firm. And they were of the opinion that, based on the information available, the claim didn't enjoy prospects of 51% or greater. So, the policy terms and conditions hadn't been met.

I appreciate Mr L didn't agree with the legal assessment. He said the panel solicitor had misplaced incidents and not cross examined his statements enough. But having considered the panel solicitor's assessment, I'm satisfied its properly written, well-reasoned, and not obviously wrong. And it's been obtained from a suitably qualified lawyer.

So, I haven't seen anything to persuade me that AmTrust shouldn't have relied on the panel solicitor's legal opinion. Rather, it was up to Mr L to obtain a contrary legal opinion on the merits of his claim, at his own cost, if he wanted to challenge this further.

Mr L opted to go straight to a barrister for his legal challenge. And I can understand why. It had taken six weeks for the panel solicitors to provide their prospects assessment and Mr L only had just over three weeks remaining before he had to issue his claim in court – based on the limitation date given in the panel solicitors assessment. So Mr L didn't have time to get a solicitor's assessment and then wait for AmTrust to obtain a barrister's opinion.

It's not clear why the panel solicitors took six weeks to assess Mr L's claim, which is far longer than what's usual or expected for a prospects assessment. AmTrust say its not responsible for the actions or conduct of its panel solicitors' – but whilst that may be true, it is responsible for Mr L's claim and ensuring it progresses promptly and fairly.

Mr L informed AmTrust on several occasions about the urgency of his claim and the lack of progress by the panel firm, and AmTrust will be aware of the short deadlines to submit an employment claim in court. Despite sending emails to the panel solicitors, I can't see what support AmTrust gave Mr L. The panel solicitors told AmTrust they were regularly contacting Mr L, but it's not clear from the information provided what they were contacting Mr L about or

why they weren't in a position to complete their prospects assessment. So I can't be satisfied that these delays were unavoidable or that it was reasonable for AmTrust to refrain from getting more involved or instructing someone else.

In any event, due to the time the panel solicitors took to assess the claim, I agree with Mr L that he didn't have sufficient time to follow the legal challenge process in the usual way. And by obtaining the barrister's assessment first, Mr L has effectively saved AmTrust the cost of doing so – a cost it would've incurred itself had Mr L provided a legal challenge from a solicitor. So, I'm persuaded it's fair that AmTrust reimburse the cost of the barrister's opinion to Mr L in full.

AmTrust has agreed to cover Mr L's legal costs from 16 December 2024 – which is the date it received the positive prospects assessment from the barrister. I'm satisfied this is fair, as prior to this date, AmTrust could fairly rely on the legal opinion of its panel solicitors which said the claim didn't enjoy reasonable prospects of success.

I appreciate Mr L believes the supportive opinion of his barrister shows that the panel solicitor's assessment was flawed. And he's raised concerns about the impartiality of the panel firm. But I don't agree. A legal opinion is just that – an opinion. We often see different legal opinions on a claim – it's not unusual and it doesn't mean one opinion is right, and the other is wrong. If all lawyers agreed, there would never be a need for a case to be decided by a court.

Overall I'm not persuaded that, prior to 16 December 2024, Mr L's claim had satisfied the policy terms. So I'm satisfied AmTrust doesn't need to backdate cover any further.

### **Responses to my provisional decision**

Mr L has asked that I clarify within my decision whether AmTrust is required to pay his legal costs and disbursements incurred from 16 December 2024 in full and upfront.

AmTrust accepted 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.

I appreciate Mr L wants me to provide further clarification on what costs AmTrust should pay on his claim. But this falls outside the scope of this complaint. I'll explain why.

I only have the jurisdiction to look into the complaint Mr L raised to AmTrust, and which was addressed in its final response letter dated 22 January 2025. That complaint relates to AmTrust's reliance on its panel solicitor's negative prospects assessment, its lack of oversight of its panel solicitor, and its failure to cover costs incurred prior to 16 December 2024 including the cost of obtaining a legal challenge from a barrister. I've addressed those complaint points.

It's clear Mr L is unhappy with the terms AmTrust is willing to appoint his chosen solicitor under, including the hourly rate and the arrangement to pay costs at conclusion of the claim. This is a new complaint, which Mr L needs to raise to AmTrust in the first instance. And when

he has a final response letter – or if eight weeks passes without one – he can then escalate his complaint to our Service if he remains unhappy.

### **My final decision**

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

- pay the full cost of the barrister's opinion to Mr L plus 8% simple interest from the date he paid it to the date he is reimbursed.

AmTrust Specialty Limited has offered to cover Mr L's legal fees from 16 December 2024 and I'm satisfied this is fair in the circumstances. But any dispute over the amount AmTrust is paying towards these costs and its terms of appointment falls outside the scope of this decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 4 March 2026.

Sheryl Sibley  
**Ombudsman**