

## **The complaint**

Mr D and Mrs D are unhappy with how AmTrust Specialty Limited dealt with a claim under a legal expenses insurance policy.

Mr D has dealt with the claim and complaint so for ease, I will refer to him below.

Any references to AmTrust are also intended to refer to the actions of any agents working on its behalf.

## **What happened**

What follows is only a summary of the events that led to the complaint. Both parties are aware of what happened, so I do not intend to set this out in full.

Mr D contacted AmTrust as he wished to make a claim for assistance with an employment dispute. AmTrust explained that Mr D would need to complete the internal grievance process with his employer before any assistance could be provided under the policy.

Once Mr D had completed this, AmTrust instructed a panel solicitor firm to assess the claim to see if it met the policy requirements for cover. The solicitor firm gave the opinion that it didn't think the claim Mr D wished to make had prospects of success, so AmTrust let Mr D know it wouldn't be able to accept his insurance claim.

Mr D provided AmTrust with an alternative opinion from a solicitor of his choosing which said his legal claim did enjoy prospects of success. Based on this AmTrust asked the panel solicitor firm to instruct a Barrister to provide an opinion on the merits of the legal claim. Mr D made it clear to AmTrust the opinion needed to be received quickly as there was an imminent Tribunal deadline to be met.

Unfortunately, the staff member contacted by AmTrust at the solicitor firm, had left the business and the email wasn't read. AmTrust wasn't aware of this and told Mr D a Barrister had been instructed. It wasn't until some weeks later, after Mr D had chased for a progress update, this error was realised. Due to the delay, AmTrust directly approached a Barrister's chambers and arranged for a Barrister to be instructed. Their opinion, which was provided before the date of the Tribunal deadline, said they didn't think the legal claim had prospects of success. Based on this, AmTrust again let Mr D know it wouldn't be able to accept his claim under the insurance policy.

Mr D, unhappy with what had happened, made two complaints to AmTrust during this time. He set out he was unhappy he wasn't provided with assistance earlier in the employment dispute process - he didn't think his employer was actively engaging in the grievance process and he needed advice and support to advance his claim. He was unhappy with the opinion reached by the panel solicitor instructed by AmTrust and the process which needed to be followed to challenge this. He also set out that he was unhappy with the delay in a Barrister being instructed to provide their opinion and that he was not provided with the Barrister's name.

AmTrust considered Mr D's complaints but didn't uphold them, so Mr D brought his complaint to this service.

An Investigator considered the complaint points Mr D had made but explained he didn't think AmTrust had done anything wrong. He was of the opinion that it had assessed the claim in line with the terms and conditions of the policy. He also set out that he thought that while there was a delay in a Barrister being instructed, this didn't impact Mr D's underlying legal claim.

Mr D remained unhappy and asked for an Ombudsman to consider the complaint. The complaint has passed to me to decide.

### **My provisional findings**

I issued my provisional findings on 10 February 2026, in it I said I intended to uphold the complaint for the following reasons.

*"I acknowledge the matter is very important to Mr D, he has sent a great deal of correspondence about the underlying legal claim as well as his complaint against AmTrust. I want to reassure Mr D I've considered and thought carefully about all of the points he has made.*

*The purpose of my decision isn't to address every single point the parties have raised or to answer every question asked. My role is to consider the evidence presented by both parties to reach what I think is a fair and reasonable decision. This means I won't be responding in a similar level of detail, and I will concentrate on providing my reasons for the decision I have reached.*

*In considering what's fair and reasonable in the circumstances I have taken into account relevant law and regulations, regulators' rules, guidance and standards, codes of practice and, where appropriate, what I consider to have been good industry practice at the time.*

*Should AmTrust have allowed Mr D to instruct a solicitor earlier in the employment dispute process?*

*Mr D says he should have been supported earlier in the dispute process. He doesn't think AmTrust acted reasonably by not allowing access to a solicitor to assist him in the pre-Tribunal process.*

*Under the Employment Disputes section of the policy, it sets out that it provides cover for:*

*"Standard Advisers' Costs to pursue a Legal Action brought before an Employment Tribunal (or its equivalent in Scotland, Northern Ireland, the Channel Islands or the Isle of Man) against an employer or ex-employer for breach of Your Contract of Employment as an Employee".*

*It then goes on to explain the following is not covered:*

*..."b) For Standard Advisers' Costs of any disciplinary investigatory or grievance procedure connected with Your Contract of Employment or the costs associated with any settlement agreement;".....*

*These terms are common in legal expenses policies as legal action should be an avenue of last resort, once all other resolution attempts have been exhausted. This also reflects the fact that in most cases, to be able to take an employment claim before a Tribunal, certain*

*processes, such as any relevant company grievance procedure need to be used first. So I don't think AmTrust acted unreasonably when it explained to Mr D it couldn't accept his claim until he had reached the end of the company's internal grievance process.*

*I can see Mr D said he needed assistance to place a value on his claim. As this was before the point a claim could be accepted under the policy, I think it was reasonable that AmTrust provided Mr D with the telephone number for the legal advice helpline to see if that would be able to assist him with his query.*

*Was it fair AmTrust said Mr D had to challenge the panel solicitor's assessment with a positive assessment from his chosen solicitors?*

*Mr D has said in his submissions he thinks where a consumer disagrees with a solicitor's opinion then it should be for an insurer to instruct a Barrister. I don't think that is reasonable. Insurers aren't legal experts and therefore it is reasonable they seek the opinion of relevant experts when making claim decisions. While a consumer may disagree with the opinion a solicitor reaches, they similarly aren't usually experts in law. So, it isn't unreasonable that an insurer asks for an alternative opinion from a suitably qualified individual before it reassess whether a claim meets the policy requirements for cover.*

*Mr D has questioned why AmTrust didn't just tell him in the first instance to get an opinion from a Barrister. It is generally more expensive to instruct a solicitor than it is a Barrister. I wouldn't therefore expect an Insurer to only accept a conflicting opinion from a Barrister.*

*This could have the result of putting consumers to considerable cost when it may not be required and may present a barrier to a claim being pursued.*

#### *Delay in appointing a Barrister*

*I think it's important to note here that while Mr D had provided a positive assessment from his chosen solicitor, the claim had not been accepted under the insurance policy.*

*It is reasonable where there are two conflicting opinions that a Barrister's assessment is sought. And I'm pleased to see AmTrust arranged for this.*

*However, despite sending instructions to the panel solicitor at the start of January, nothing was received back confirming the instruction had been made. However, on 14 January 2025, in an email to Mr D, AmTrust specifically said the solicitors had instructed a Barrister, when this was not the case. And the true position wasn't discovered until nearly two weeks later, after AmTrust had chased twice chased for an answer.*

*I accept AmTrust then acted quicky to ensure a Barrister was instructed and their opinion was received before the tribunal deadline. But, I do think, given Mr D had an imminent Tribunal deadline, finding out a Barrister had not been instructed when he was told they had, would have caused him additional frustration. Due to this I think AmTrust should pay him £100 compensation to recognise the impact its actions had here.*

#### *The Barrister's details*

*Mr D has set out he is unhappy AmTrust didn't provide him with the Barrister's details. But I don't think it needed to at that point. The Barrister was properly instructed and provided their considered opinion, which is all that was required for a decision on policy coverage.*

*I understand Mr D raised concerns about the Barrister's opinion in terms of the information they received from AmTrust and how AmTrust dealt with the insurance claim past this point,*

*however these issues do not form part of my decision. I understand these are being dealt with under a separate complaint reference at this Service.*

*My provisional decision*

*I intend to uphold Mr D and Mrs D's complaint against AmTrust Specialty Limited and direct it to pay £100 compensation".*

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

AmTrust responded saying it accepted my provisional decision.

Mr D responded saying while he was happy, I'd awarded compensation he didn't think it went fair enough to reflect the impact on him. He set out in detail why he thought that to be the case, in summary he mentioned the following:

- The delay in instructing a barrister occurred at a critical stage, valuable time was lost which created real pressure and uncertainty,
- Financial loss flowed from AmTrust's process, he had to instruct solicitors and a barrister to meet AmTrust's requirements for policy coverage. He believes this process is unfair and wants to be reimbursed the full fees he incurred with interest.
- He had to take steps to protect his legal position, without support, due to AmTrust's process.
- He doesn't believe the award of £100 compensation reflects the stress he was caused.

### **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.

I want to reassure Mr D that I've fully considered everything he has said, but I'm not minded to change the outcome I reached in my provisional decision.

I set out in my provisional decision why I am satisfied AmTrust followed the correct process in terms of confirming policy coverage. I remain of that opinion. I understand this meant Mr D incurred legal costs in order to demonstrate he had a valid claim which met the policy requirements, but I don't think AmTrust did anything wrong here. Given AmTrust has later gone on to accept the claim, how much of those initial legal costs should be reimbursed would be a matter for AmTrust to consider in line with the policy terms and conditions. It isn't something I'm considering here.

I acknowledged in my provisional findings the delay in the Barrister being appointed was at an important time as the Tribunal deadline was approaching and, this would have caused Mr D additional worry. However, I also have to bear in mind, the resulting opinion from the Barrister was not positive and therefore policy coverage was not initiated. So, while there was a delay, Mr D wasn't in any different position. At that point in time, no cover was available under the policy so he still would have needed to instruct a lawyer on a private basis if he wanted assistance in preparing for the Tribunal.

Having reconsidered everything, and the additional submissions that have been provided I remain of the opinion that AmTrust declined the claim fairly and in line with the policy terms and conditions. I do however think the delay in a Barrister being instructed would have caused Mr D additional worry and, it should pay £100 compensation to reflect the impact its actions had.

### **Putting things right**

AmTrust should pay Mr D and Mrs D a total of £100 compensation.

### **My final decision**

My final decision is I uphold this complaint. AmTrust Specialty Limited should put things right as I have set out in the section above.

AmTrust Specialty Limited must pay the compensation within 28 days of the date on which we tell it Mr D and Mrs D accept my final decision. If it pays later than this it must also pay interest on the compensation from the deadline date for settlement to the date of payment at 8% a year simple.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D and Mrs D to accept or reject my decision before 27 March 2026.

Alison Gore  
**Ombudsman**