

The complaint

Mr C complains that Amtrust Europe Limited rejected a claim on his legal expenses insurance policy.

Where I refer to Amtrust, this includes its agents and claims handlers acting on its behalf.

What happened

Mr C had a legal expenses insurance policy which started in April 2021. He made a claim on the policy to cover the legal costs of bringing a medical negligence claim against his GP.

Amtrust said the claim wasn't covered, because the incidents that led to the claim had started before he took out the policy, and the insurance didn't provide cover in those circumstances. Mr C disagreed and lodged a complaint but Amtrust didn't change its decision, so he referred his complaint to this Service.

Our investigator didn't think the complaint should be upheld. She said the policy started in April 2021 and there had been a series of events dating back to May 2020 which led to the claim.

Mr C has requested an ombudsman's decision. He says the negligent act which caused him harm and would form the basis of his legal action took place in July 2021 – after the policy started.

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.

Mr C's policy with Amtrust provides cover for medical negligence claims but only where the insured incident takes place within the period of cover. There's no cover if the insured incident started before he bought the insurance.

The policy defines "Insured incident" as the *"incident or the first of a series of incidents which may lead to a claim under this insurance. Only one insured incident shall be deemed to have arisen from all causes of action, incidents or events that are related by cause or by time."*

Terms like this are not unusual in legal expenses policies, since the insurance is designed to cover the risk of something happening in the future.

Mr C says:

- the negligent act was the event which caused him physical harm, which happened in July 2021 and led to him being removed as a patient and left without medication;
- this event began with him being incorrectly labelled as having a learning difficulty and a mental illness in May 2020, but he didn't know about that until 2021, after he obtained his records – *"the only event which may have been of a level of 'medical*

negligence' prior to [the policy] was a label of 'Learning Difficulty' and I did not have access to that information until 09/08/2021"

Mr C had registered with the GP practice in May 2020. There followed a series of incidents that he was unhappy about. In August 2021 he obtained details of the records held about him and says this showed the practice had wrongly labelled him as having a learning difficulty and mental health issues, which wasn't the case. He says this is the first he knew about it.

I appreciate Mr C says that while he was unhappy with various incidents before April 2021, the specific incident that he wishes to take legal action on didn't happen until after he took out the insurance. But that incident needs to be seen in context.

By his own account, the problems stemmed from what happened in May 2020. Even if he didn't know specifically what had caused the issues (the way he had been labelled) he did think he was not being treated correctly. So he knew something was wrong even if he didn't know the specific reason for it.

And when he made the claim to Amtrust, he said the matter "*came to a head when I was referred to.... who changed my medication*", ultimately leaving him without medication.

So the incident in July 2021 didn't happen in isolation; it was the latest in a series of ongoing events relating to the way he was treated and problems with his medication which, in his own words "came to a head" in July 2021. That series of incidents had started before he took out the policy.

Taking all of the circumstances into account, I think it was reasonable for Amtrust to say the sequence of events started before he took out the policy and so the claim wasn't covered.

Amtrust's claims handlers considered whether the claim might be covered by the insurance Mr C had in place the previous year. As that policy was provided by a different insurer, it's not something I can consider in this complaint though I note Mr C has in any event said he accepts that policy wouldn't have covered it.

My final decision

My final decision is that I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 11 December 2023.

Peter Whiteley
Ombudsman