

## **The complaint**

Mr B's complaint is about a claim he made on his MS Amlin Insurance SE ('MS Amlin') legal expenses insurance policy.

Mr B says MS Amlin treated him unfairly.

All references to MS Amlin include their claims handlers.

## **What happened**

Mr B made a claim on his MS Amlin legal expenses insurance policy for cover to bring a claim in respect of some works to his boat. MS Amlin appointed a panel firm of Solicitors to consider his claim. Those Solicitors, with the assistance of lawyers in Spain, initially confirmed the claim had reasonable prospects of success so MS Amlin agreed to cover their costs.

Further into the claim the panel firm began to express doubts about whether the claim remained proportionate to pursue considering the expert evidence received and the costs they'd already incurred to date. They proposed the claim should be settled in light of this, Mr B and MS Amlin both agreed to this. As such the claim was concluded.

Mr B was dissatisfied with the position he found himself in, however. He said that after inspecting the boat, he found the engine was not working as it hadn't been maintained whilst in the third party's possession. The panel firm confirmed to MS Amlin that maintenance of the boat's engine wasn't part of the settlement agreement with the third party nor any repairs that arose out of that. He's also unhappy with the standard of works conducted by the third party. The panel firm say the work carried out in accordance with the settlement agreement is recorded by a survey report conducted by Mr B's surveyor. As such they take the view that the matter is now at an end and therefore there is nothing further that cover extends to. In addition, they say that incurring any further costs are disproportionate. In light of this MS Amlin said no further funding was available to Mr B.

Mr B is unhappy with MS Amlin's approach. He isn't satisfied with the standard of the works carried out by the third party in settlement of the dispute. He feels they were so below standard that they put the safety of passengers at risk. Mr B says he's spoken to the company that surveyed the boat and they've agreed the third party didn't honour the agreement when carrying out the work. In addition, he says that it was always known the boat's engine wasn't functioning correctly. He feels that the legal team in Spain should have gone to see it themselves and if they'd done so, they might have understood the problems he was complaining about. In particular, the issue regarding maintaining the engine would have been properly identified so someone should now be responsible for that. He feels that the fact that it took nearly three years to investigate the engine allowed it to deteriorate so badly that it had to be rebuilt again. He feels that MS Amlin are responsible for this because their Solicitors took too long to deal with the claim and failed to pick up on the problems affecting the engine.

Our investigator considered Mr B's complaint and concluded that it shouldn't be upheld. Mr B

doesn't agree so the matter has been passed to me to determine.

### **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.

The starting point is the policy terms. It's a requirement of virtually all legal expenses insurance policies that any intended claim has a reasonable prospect of succeeding and is proportionate to pursue. Mr B's policy is no exception. That means his claim needed to have over 51% prospects of succeeding and the sum likely to be recovered needed to be more than the costs likely to be incurred for MS Amlin to cover them.

We don't think this is unfair. Litigation can be expensive. A privately paying customer wouldn't want to bear the cost if advised it is unlikely to succeed or if the amount they will recover is less than they would spend on costs. We wouldn't expect a legal expenses insurer to fund claims in these circumstances either.

Where an insurer has declined funding in such a case, it isn't for us to evaluate the merits of the underlying claim. Instead, we look at whether the insurer has acted fairly. So long as they have got 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. MS Amlin did this.

I'm satisfied that the Solicitor and the lawyers instructed in Spain together were experienced in the area of law Mr B was asking for help with and I've seen nothing that suggests their advice was based on factual mistakes. I appreciate Mr B doesn't agree with the advice he's received or the ultimate outcome of his claim but that's not something I can consider. If Mr B is able to provide an alternative reasoned opinion from a comparable Solicitor setting out that the third party is in breach of the settlement agreement and that there is a specific party responsible for the condition of the boat's engine and these claims are proportionate to pursue, then I would expect MS Amlin to consider these subject to the remaining policy terms. Equally, if Mr B provides MS Amlin with any new evidence or information that has now come to light that might change the outcome of the current assessment of his claim – such as something from the expert he says has told him the third party is in breach of the agreement, then I would expect MS Amlin to refer that back to their panel firm. But as matters stand, I can't say MS Amlin did something wrong by relying on the legal opinion they received. They are not legal professionals so are reliant on the advice of those professionals when deciding whether a claim is proportionate to pursue or indeed at an end.

I appreciate that Mr B doesn't agree with the way in which his claim was handled. He feels it took too long to conclude, which led to the boat's engine deteriorating. I can't hold MS Amlin responsible for this. The underlying dispute that Mr B claimed for is not something they're responsible for and I can see that when Mr B complained about the time things were taking, MS Amlin proactively chased this with the panel firm with a view to moving matters on. So, whilst Mr B says the panel firm are to blame for how they handled things, I can't say that MS Amlin did something wrong here. If Mr B remains unhappy with the panel firm's conduct, he can raise the matter with them directly or refer it to the Legal Ombudsman.

### **My final decision**

For the reasons set out above, I don't uphold Mr B's complaint against MS Amlin Insurance SE.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or

reject my decision before 21 November 2023.

Lale Hussein-Venn  
**Ombudsman**