

## **The complaint**

Mr D is unhappy with what Amtrust Europe Limited did after he made a claim on his legal expenses insurance policy.

## **What happened**

Mr D has legal expenses insurance with Amtrust (provided as part of his home insurance policy). In February 2021 he sought assistance with a claim he wanted to bring against his employer. Having obtained further information about that claim Amtrust asked a panel solicitor to assess whether it had reasonable prospects of success (a requirement of the policy). A solicitor at that firm advised it didn't in April 2021.

Mr D pursued the claim privately and reached a settlement with his employer in October 2022. He contacted Amtrust again as he believed that showed his claim had been unfairly declined. Amtrust said it was entitled to rely on the legal opinion it had previously been provided with.

Our investigator agreed and didn't think there had been any avoidable delay by Amtrust in progressing the claim. Mr D said he'd been wrongly advised by Amtrust to withdraw his claim and return to work. And he disputed that it didn't meet the prospects of success requirement set out in his policy. He didn't believe Amtrust had taken the claim seriously. So I need to reach a final 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.

The relevant rules and industry guidelines say Amtrust has a responsibility to handle claims promptly and fairly. It shouldn't reject a claim unreasonably

I've looked first at the terms and conditions of Mr D's policy. These say "*at any time We may, but only when supported by independent legal advice, form the view that You do not have a more than 50% chance of winning the case and achieving a positive outcome. If so, We may decline support or any further support*". And it's usual for legal expenses insurance policies to contain a term like this.

Mr D says referring the claim to a separate firm for an assessment of its prospects of success shows Amtrust didn't know what it was doing. I don't agree with him on that. An insurer isn't a legal expert and so we don't think it's in a position to carry out a legal assessment. It should be carried out by a suitably qualified lawyer who has relevant experience. Where that has been done we think it's reasonable for an insurer to rely on a properly written and reasoned legal opinion when deciding whether a claim has prospects of success or not.

In this case Amtrust did refer the matter to one of its panel firms for assessment. I think that was the right thing for it to do and I can see that assessment was carried out by a qualified lawyer whose area of practice includes employment law. I've read the assessment and I think it is properly written and reasoned; it addresses the claim made by Mr D and gives reasons for why it's unlikely to succeed.

I recognise Mr D disagrees with that assessment but I don't think there was any reason why Amtrust shouldn't have relied on it. And the fact that Mr D did achieve a subsequent settlement with his employer doesn't mean Amtrust was wrong to rely on the assessment either. A negative prospects assessment doesn't mean a customer has no chance of winning their case; just that it's unlikely. And there may have been other factor that led the employer to offer a settlement in this case.

However, we would expect an insurer to reconsider matters if a policyholder provided more evidence or a favourable legal opinion from a qualified lawyer. And we'd also expect an insurer to make it clear to the customer when they reject the claim that it will do this. In this case I can't see Amtrust did that.

I've thought about whether Mr D lost out because of that. He hasn't provided any new information or obtained a contrary legal opinion in the correspondence I've seen. If he is now able to provide a positive legal opinion from a suitably qualified lawyer on what his claims prospects of success would have been at the point it was turned down I'd expect Amtrust to reconsider matters. But on the basis of the evidence currently available I can't conclude he's lost out because of anything it got wrong here.

I've also considered whether Amtrust caused any issues with the handling of Mr D's claim. I don't think it did. I think it was reasonable of it to initially seek clarification from Mr D on the issues he was raising and why he thought his employer had been at fault. And once it had received more information on that I can't see there was significant delay in matters then being referred to the panel solicitor for assessment.

Mr D says Amtrust suggested he withdraw his claim and return to work. But I can't see reference to that in the correspondence I've seen. I appreciate the advice from the panel solicitor did set out some possible next steps that Mr D might want to consider which included thinking about returning to work (the solicitor was concerned not doing so might lead to his dismissal). However, that isn't something Amtrust is responsible for; if Mr D is dissatisfied with the action of that firm he might be able to pursue a separate complaint with it and to the Legal Ombudsman if he remains unhappy.

### **My final decision**

I've decided not to uphold this complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 21 November 2023.

James Park  
**Ombudsman**