

The complaint

Mrs C complains about Amtrust Europe Limited's decision to not cover a claim she made under her legal expenses insurance (LEI) policy.

Any reference to Amtrust includes the actions of its agents.

What happened

The circumstances of this complaint are well known to both parties, so I've summarised what happened.

- Mrs C has a LEI policy which is underwritten by Amtrust. She sought to use the policy to pursue an employment legal claim. Amtrust accepted the claim, and it was reviewed by one of its panel firm of solicitors – who I'll refer to as "S" – for a prospects of success assessment.
- S issued an opinion which advised the legal claim had prospects of 49/50% success. However, because the policy requires the legal matter to have prospects of success greater than 50%, Amtrust said it couldn't fund Mrs C's legal claim and so, it withdrew cover.
- Some back and forth ensued between Mrs C and S about the prospects of success and how it had been reached. But ultimately, S didn't consider the legal matter to have a greater than 50% chance of succeeding should it go to court. And so, Amtrust maintained its position.
- In its final response, Amtrust advised that if Mrs C wanted to challenge S's legal opinion, she could do so by providing a barrister's legal opinion on prospects of success. It said that if a barrister deemed the legal matter to have a greater than 50% chance of succeeding at court, Amtrust would cover the cost of obtaining the barrister's opinion. And it sent Mrs C the contact details for three barristers.
- Unhappy with Amtrust's decision to withdraw cover, Mrs C brought a complaint to this Service. She said she instructed her own solicitor to take the legal matter to a tribunal but had to withdraw owing to the mounting costs.
- An Investigator considered the complaint but didn't uphold it. He was satisfied it was reasonable for Amtrust to rely on S' legal opinion. And as the legal advice said the claim didn't have a greater than 50% chance of succeeding – which is what the policy requires - he was satisfied Amtrust's decision to not cover the claim was in line with the policy terms.
- In response, Mrs C said she'd not been able to obtain a barrister's opinion because the barristers – whose details had been shared with her by Amtrust – either didn't have capacity to take on her case or didn't reply to her enquiry. So, she didn't think Amtrust had done enough to help her. She also explained how Amtrust's decision to withdraw cover impacted her both financially and personally.

- The Investigator considered Mrs C's response, but it didn't change his mind. He said Amtrust wasn't responsible for sourcing a barrister for her, and that its action of providing contact details was reasonable in the circumstances.
- Mrs C disagreed and so, the complaint has been passed to me for an Ombudsman's 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.

Having done so, I agree with the outcome our Investigator reached. But before I explain why, I must make it clear that I am only considering those issues which I deem relevant to deciding the outcome of this complaint. Mrs C has raised concerns about S's conduct, but this isn't something I can comment on. She'd need to complain to S in the first instance, and subsequently refer the matter to Solicitor Regulation Authority and Legal Ombudsman, if appropriate.

The crux of *this* complaint is whether Amtrust's decision to withdraw cover was fair. The starting point is the policy document which says:

"Following an Insured event the insurer will pay the insured's legal costs & expenses up to £100,000 (including the cost of appeals) for all claims related by time or originating cause, subject to all of the following requirements being met:

[...] 4) The claim

a) Always had reasonable prospects of success [...]"

The policy defines "reasonable prospects of success" as:

"Other than as set out in 2 and 3 below, a greater than 50% chance of the insured successfully pursuing or defending the claim and, if the insured is seeking damages or compensation, a greater than 50% chance of enforcing any judgment that might be obtained."

Based on the above, I'm satisfied the policy makes it clear that the legal matter must *always* have prospects of success "*greater than 50%*" in order for Amtrust to cover the claim. Here, S advised Mrs C's legal matter had 49/50% chance of success – and so, doesn't meet the policy threshold.

Whilst I understand Mrs C's strength of feeling in respect of this – particularly as it is a fine margin - ultimately, S has provided a reasoned legal opinion – which was drafted by a suitably qualified solicitor explaining why Mrs C's legal claim doesn't enjoy prospects greater than 50%. And as Amtrust is an insurer and not a legal expert, it's entitled to rely on S's legal advice to determine whether Mrs C's claim was covered by the policy or not.

In the absence of any evidence to suggest S's opinion was obviously wrong, I'm satisfied Amtrust's decision to rely on the advice and in turn, withdraw cover was fair and reasonable in the circumstances.

I've thought about Mrs C's argument – namely, that Amtrust's lack of assistance in obtaining a barrister's opinion to challenge S's legal opinion, put her in a detrimental position. As a starting point, I've looked at the policy document to see what it says in respect of this –

which is:

“Barrister’s opinion

We may require the insured to obtain and pay for an opinion from a barrister if a dispute arises regarding the merits or value of the claim. If the opinion supports the insured, then the insurer will reimburse the reasonable costs of that opinion. If that opinion conflicts with the advice obtained by us, then the insurer will pay for a final opinion which shall be binding on the insured and us. [...]”

I note this was also explained to Mrs C at the time Amtrust told her it was withdrawing cover – so I’m satisfied Amtrust clearly explained what Mrs C needed to do next – should she want to challenge S’s legal opinion. From what I’ve seen Mrs C understood this, but she doesn’t think Amtrust helped her enough in finding a barrister. But I disagree and I’ll explain why. First, having looked at the policy document there’s no obligation on Amtrust to find a barrister for Mrs C if she wants to challenge S’s legal opinion. I’m satisfied it makes it clear it would be for Mrs C to obtain and pay for. Second, whilst Amtrust shared barristers’ contact details with Mrs C, I’m not satisfied this meant it had taken on the responsibility of finding a barrister for her. As I see it, it was simply trying to assist Mrs C with her early enquiries. But, in any event, the responsibility of obtaining a barrister’s opinion always remained with Mrs C. And so, I don’t consider there to have been a failing on Amtrust’s part in how it handled this aspect of Mrs C’s claim.

I appreciate this has been a difficult time for Mrs C and I recognise Amtrust’s decision to withdraw cover has caused her financial stress and worry. But based on what I’ve seen, I’m not persuaded Amtrust’s decision was unfair. And as I don’t consider Amtrust to have been responsible for sourcing a barrister, I’m not upholding this complaint.

My final decision

My final decision is I don’t uphold this complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mrs C to accept or reject my decision before 26 February 2024.

Nicola Beakhust
Ombudsman