

## **The complaint**

Ms F and Mr S' complaint is about a claim they made on their Amtrust Europe Limited ('Amtrust') legal expenses insurance policy, which was declined.

Ms F and Mr S feel that Amtrust treated them unfairly.

In this decision all references to Amtrust include their claims handlers.

## **What happened**

Ms F and Mr S made a claim on their Amtrust legal expenses insurance policy for help with an employment claim for Ms F.

Amtrust appointed a panel firm of Solicitors to consider Ms F's claim who concluded it didn't have reasonable prospects of success and that Amtrust's position would be prejudiced if they funded it at this point because of the way it had been pleaded and the fact that it was too late to amend the claim. As such Amtrust said they weren't prepared to fund Ms F's claim on reliance of their policy terms.

Ms F continued to pursue her claim and was successful in obtaining a settlement from the party she was claiming against. She and Mr S say that if they'd been provided with adequate legal representation, they would have obtained a more favourable settlement and that the settlement they obtained is evidence their claim did have reasonable prospects of success. In addition, Ms F and Mr S say that the panel firm wasn't an expert in the area of law she was advising on and that they had previously obtained expert advice from a lawyer in this area who had said the claim did have merit.

Our investigator considered Ms F and Mr S' complaint and concluded it shouldn't be upheld. She said that Amtrust were entitled to rely on the opinion of the panel Solicitor who was suitably qualified to advise on the claim Ms F was asking for help with and the advice wasn't obviously wrong or based on factual mistakes. As such she said that Amtrust didn't do anything wrong.

Ms F and Mr S don't agree so their complaint 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.

Having done so, I won't be upholding Ms F and Mr S's complaint for broadly the same reasons set out by the investigator.

Ms F and Mr S have made some detailed submissions in this complaint. I won't be addressing each one of those in this decision. Rather, I'll deal with the main points they're unhappy with. That's not to say that I haven't considered everything they've said. My approach simply reflects the informal nature of the Financial Ombudsman Service.

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. Ms F and Mr S' policy is no exception. That means Ms F's claim needed to have over 51% prospects of succeeding in order for Amtrust to cover it.

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 they're likely to pay more in costs than they are likely to recover. 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, and as the investigator explained, 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. Amtrust did this.

I'm satisfied that the person advising Ms F was suitably qualified and experienced in the area of law she was asking for help with, and I've seen nothing that suggests her advice was based on factual mistakes. I appreciate Ms F and Mr S don't agree with the advice Ms F received and feel she received specialist advice from another lawyer, but that's not something I can consider. If, as Amtrust said, they were to provide an alternative reasoned opinion from a comparable Solicitor (and not something summarising any advice they might have been given themselves), then I would have expected Amtrust to consider that. But as matters stand, I can't say Aviva did something wrong by relying on the legal opinion they received.

I understand the points Ms F and Mr S have made which they feel support that Ms F's claim did have merit- but I don't agree that this means the assessment of the panel firm was wrong. Legal assessments are not an exact science- they are made on the basis of the information provided and on the opinion of the legal professional. A claim that a lawyer determines doesn't have reasonable prospects of success doesn't mean it's destined to fail but rather that it's more likely to fail than not. And even though Ms F achieved a settlement from the other party in her claim, this in itself isn't good evidence that her claim always had reasonable prospects of success. The only way she could have demonstrated that was to have provided an opinion from a comparable lawyer setting out their view at the time her claim was declined. And given Ms F and Mr S said they'd already taken advice from a specialist in this area of law before they started the claim, I'm not sure why they weren't able to do this to help them with their claim for funding from Amtrust. It was up to them to put a comparable opinion to Amtrust if they wanted their claim to be reconsidered at the time. In the absence of their doing so, I can't say the position Amtrust have taken is unfair.

**My final decision**

For the reasons set out above, I don't uphold Ms F and Mr S' complaint against Amtrust Europe Limited

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms F and Mr S to accept or reject my decision before 16 May 2024.

Lale Hussein-Venn  
**Ombudsman**