

## **The complaint**

Mr L and Mrs L are unhappy with what Amtrust Europe Limited did after they made a claim on their legal expenses insurance policy.

Although the policy is in joint names, as the submissions have been made by Mrs L, for ease I'll refer to her in this decision

## **What happened**

In April 2020 Mrs L contacted Amtrust as she wanted her policy to assist in pursuing a claim against solicitors who acted for her in relation to a property investment scheme. After clarifying this was an insured event under the policy Amtrust referred the matter to panel solicitors for further assessment (including of whether claim would have reasonable prospects of success).

The panel firm told Mrs L in June 2020 the claim didn't have reasonable prospects of success but it would review matters if she was able to obtain the full file from her former solicitors. Mrs L raised further queries which the panel firm responded to at the start of July. It explained why it wanted to see the full file but said it wasn't sure further information would change its assessment. It also highlighted a policy exclusion for claims which would be affected by or might affect the outcome of others. In December 2020 the panel firm told Amtrust further information hadn't been received from Mrs L. It said it would close its file if this wasn't received within the next 14 days.

Mrs L contacted Amtrust again in July 2023. She said she'd successfully pursued her claim with another firm of solicitors on a 'no win no fee' basis but this had cost her around £7,200 in fees. She thought Amtrust should reimburse that to her as she'd have avoided those fees if it had accepted her claim when it should have done.

Our investigator said the panel solicitors hadn't been able to say whether the claim had reasonable prospects of success without the file from Mrs L's former solicitors. As that was required in order to do so she thought it was something they should have obtained rather than asking Mrs L to do that.

She also said Amtrust should have told Mrs L it would reconsider the claim if she was able to provide a positive legal opinion of her own but hadn't done so. She thought Amtrust should reimburse the costs Mrs L incurred in pursuing the claim with her own solicitors.

Mrs L agreed with her outcome. Amtrust didn't agree. It said in its initial letter to Mrs L it advised her to contact it if she was unhappy with the decision the panel firm reached. But Mrs L didn't contact it or provide the panel firm with the information it asked for. So it was unaware she disagreed with their assessment and didn't have the opportunity to explain appeal options to her. It didn't think there was any obligation on the panel firm to have obtained the file from Mrs L's former solicitors And the policy didn't cover any costs it hadn't authorised.

I issued a provisional decision on the complaint last month. In summary I said:

*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 Mrs L's policy. I don't think it's now in dispute her claim is one that's covered by an insured event in the policy. But the policy says Amtrust is entitled to decline a claim if a policyholder doesn't have "a more than 50% chance of winning the case and achieving a positive outcome".*

*It says that should be supported by legal advice (which is in line with our general approach). So I think it was right Amtrust referred the matter to panel solicitors so they could assess this. And we think it's fair for an insurer to rely on a properly written and reasoned legal assessment when deciding whether a claim has reasonable prospects of success.*

*I've reviewed the prospects assessment produced by the panel firm. It's clear in reaching that assessment the solicitor had sight of the engagement letter from Mrs L's former solicitors and email correspondence between them and Mrs L. That enabled him to conclude that advice Mrs L thought those solicitors should have given "would have been considered as advice as to the viability of the investment which [former solicitors] expressly stated that they were not going to provide".*

*I appreciate the panel solicitor made clear his opinion was based on the information he'd seen so far. And he said he'd be happy to review matters if Mrs L was able to provide the full file of papers from her former solicitor. But I think he did reach a clear finding that, based on the evidence provided to date, Mrs L's claim didn't have reasonable prospects of success.*

*I think that opinion is properly written and reasoned and from someone qualified to provide it. As such I think it's one Amtrust was entitled to rely on. So it would then be for Mrs L to obtain additional evidence to challenge that; I don't think in the light of a negative prospects assessment that's something Amtrust could reasonably have been expected to do (and I'm not clear the former solicitors would have disclosed this information to it in any case).*

*Amtrust doesn't appear to have formally communicated the claim decision to Mrs L or told her it would review the position if she was able to obtain a positive opinion from her own solicitor. But it's not clear Mrs L would have done that even if it had. She may well have been advised her claim had prospects by the 'no win no fee' solicitors she engaged. However, at the point that advice was provided I'm not clear she'd have been able pursue matters under her legal expenses policy as she might have been committed to going ahead with the 'no win no fee' solicitors.*

*Even if Mrs L had responded with a positive assessment from her own solicitors and been able to extricate herself from any agreement she'd entered into I don't think this claim is one her policy would have covered. The panel solicitors highlighted as part of their assessment that her policy says there is no cover for "Costs if Your claim is part of a class action or will be affected by or will affect the outcome of other claims".*

*Class action isn't defined in the policy so I think it's reasonable to interpret it in line with its technical meaning under UK law. That's collective proceedings brought in the Competition Appeals Tribunal (CAT) for loss or damage caused by an infringement of competition law. Clearly that doesn't apply to Mrs L's claim.*

*But I understand the collapse of the scheme Mrs L bought her property through impacted a significant number other investors. And many of them appear to have made similar claims against Mrs L's former solicitors. Information she provided suggests her 'no win no fee' solicitors pursued her claim as part of an action involving at least 180 other investment units*

*(likely significantly more) and that correspondence was sent to the former solicitors on behalf of all the claimants. So it does appear Mrs L's claim was pursued as part of a group of similar ones. And I think it is affected by, or will affect the outcome of, other claims and would fairly be caught by the policy exclusion relating to this. So the claim isn't one her policy would cover.*

*That means even if Amtrust had been clearer about the next steps in relation to the prospects assessment Mrs L would have been in the same position; her legal expenses policy wouldn't have covered the claim and she'd have had to pursue it with her own solicitors on a 'no win no fee' basis. As such she'd always have incurred the further costs she's referenced in doing so. As a result I don't think that's something Amtrust is responsible for and it doesn't need to cover them.*

## **Responses to my provisional decision**

Amtrust didn't have any further submissions to make. Mrs L did provide further comments. In summary:

- She thought the panel firm had enough information to assess her claim without the file from her former solicitors which it could in any case have requested. And it wrongly concluded her claim was unlikely to be successful. If it had taken on her case she wouldn't have had the costs of the 'no win no fee' solicitor deducted from her claim.
- She hadn't received any information from Amtrust explaining what to do if she was unhappy with the decision the panel firm reached and she wasn't told the panel firm was going to close her file. So she thought it was in breach of its contract with her. As Amtrust hadn't communicated with her she had no choice but to approach a 'no win no fee' solicitor as she was running out of time.
- She thought it was unfair her claim wouldn't be covered because her 'no win no fee' were acting for other clients in the same position. She didn't know when she approached that firm they would be progressing the claim as a group action against her former solicitors. And she didn't think that whether they did so or not was relevant as she still had to pay a percentage of her claim to the 'no win no fee' solicitors as an individual.

## **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.

I appreciate Ms L disagrees with assessment of the claim's prospects of success the panel firm reached. However, where an insurer has obtained a properly written and reasoned legal opinion from someone suitably qualified it's entitled to rely on that advice unless it's obviously wrong. I think the assessment from the panel firm in this case is properly written and reasoned and I don't think there's any reason why Amtrust shouldn't have relied on it when concluding Ms L's claim didn't have reasonable prospects of success.

And the panel firm didn't say it couldn't assess the claim without the file from her former solicitors. I think the assessment made a clear finding that, based on the evidence provided to date, Mrs L's claim didn't have reasonable prospects of success. So, as I said in my provisional decision, it would have been for Mrs L to obtain additional evidence to challenge that. I don't think that's something Amtrust should have asked the panel solicitors to do.

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But Amtrust was at fault in not telling Ms L about it's claim decision or explaining it would review the position if she was able to obtain a positive opinion from her own solicitor. Given that I understand why Ms L felt she had no choice but to approach a 'no win no fee' solicitor. However, she hasn't provided any further comment on what she'd have done differently if Amtrust had given her clearer information about the outcome of her claim.

In any event it remains my view that her claim isn't one her policy covers. Ms L says it isn't relevant that her solicitors were acting for other claimants in the same position. But her policy says cover won't be provided for "*Costs if Your claim is part of a class action or will be affected by or will affect the outcome of other claims*". And Ms L hasn't disputed that's the case here.

I appreciate she's been individually impacted as she's had to pay the 'no win no fee' solicitor costs and success fee from her settlement. But that doesn't mean the exclusion wouldn't apply to the underlying claim she made. And the issue isn't, in itself, that the claims were all being dealt with by the same solicitor but that Ms L's claim was clearly part of a significantly larger cohort of similar claims and hers was affected by the outcome of the others (and vice versa). So I continue to feel her claim would fairly be caught by the exclusion and so isn't one her policy would have covered at all. As a result I don't think she's lost out because of what Amtrust got wrong in its communication with her.

### **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 L and Mrs L to accept or reject my decision before 16 May 2024.

James Park  
**Ombudsman**