

## **The complaint**

Ms S is unhappy how Atkinson Rose LLP dealt with her Employment Tribunal claim.

## **What happened**

Ms S had already started the process of an Employment Tribunal claim when, in 2017, she instructed Atkinson Rose to assist her. She asked Atkinson Rose if they would work on a no win no fee basis, but they said they weren't able to. So Atkinson Rose worked for Ms S on an ad-hoc fixed fee basis for whatever work she needed doing at the time.

Atkinson Rose worked on this basis from May to December 2017, and again during 2018. But they were never listed as her legal representative with the tribunal – Ms S was a litigant in person, assisted in some of the hearings by a barrister. Ms S's claim was unsuccessful in October 2018, and she had £20,000 costs awarded against her in June 2019.

Ms S has complained about the costs charged by Atkinson Rose – that they didn't work on a no win no fee, and that they've said they'll increase the outstanding costs from a fixed fee to an hourly rate basis. She's also complained that she only had costs awarded against her because Atkinson Rose didn't provide paperwork to the tribunal in time. In addition to this, Ms S is also unhappy with the barrister who represented her.

Ms S brought her complaint to the Claims Management Ombudsman (a Financial Ombudsman service). Our investigator thought Atkinson Rose had acted reasonably by not offering a no win no fee service. She thought they'd charged Ms S in line with the original agreement she signed. And this agreement allowed Atkinson Rose to change their fees to an hourly rate basis if Ms S didn't keep up with the agreed instalment payments.

The investigator also said Ms S had costs awarded against her because the tribunal said her case had no reasonable prospect of success. And not because of anything Atkinson Rose did or didn't do. So she didn't think Atkinson Rose needed to pay these costs. Atkinson Rose had agreed to waive their outstanding fees if Ms S withdrew her complaint about her barrister. The investigator said it was now for Ms S to decide whether to accept this offer.

Ms S didn't agree with the investigator and has provided extensive comments as to why. So this has been passed to me to make a final decision on his case.

## **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've reached the same overall conclusions as the investigator, and for broadly the same reasons. While I've fully considered all of the evidence, and Ms S's comments, I've focused my comments on what I think is relevant. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome.

Before I address Ms S's complaints about Atkinson Rose, I think it would be helpful if I explained what I can and can't look at. Ms S is unhappy with her barrister, but the barrister doesn't fall under our jurisdiction. So I can't look at what the barrister did. Complaints about barristers are dealt with by the Legal Ombudsman, and they'll be able to look at this.

Ms S has also said she's unhappy that the Legal Ombudsman aren't able to look into Atkinson Rose because they're solicitors. But I've not seen anything to show me that Atkinson Rose are, or were, regulated as solicitors – they're regulated as a claims management company. So complaints about their service are dealt with by the Claims Management Ombudsman. I appreciate having to make two complaints to two different ombudsmen about the same underlying matter is inconvenient to Ms S; but we can't look at her complaints about the barrister, and the Legal Ombudsman can't look at Atkinson Rose.

Ms S has also said that a friend of hers used Atkinson Rose for a case that was *"far more complex yet she was charged less money for the services she used."* All complaints are considered independently, so I'm not able to look into the service Atkinson Rose provided to any other clients, including what they charged them. My decision will be based solely on the service Atkinson Rose provided to Ms S.

Ms S submitted her claim to the Employment Tribunal on 28 February 2017. While she'd had some initial conversations with Atkinson Rose both before and after this date, she didn't formally instruct them to act for her until May 2017.

While I'm aware Ms S wanted to be represented on a no win no fee basis, this isn't something that I'd expect to be offered to all clients. They're usually only offered where there's a high chance of success, and where the percentage success fee charged would at least cover the cost of all the work that needed to be done. Ms S said she spoke to a few solicitors before instructing Atkinson Rose, and their fees were too high for her. So this tells me they also didn't offer a no win no fee agreement, and that, on the face of it, Ms S's case was considered to have lower prospects of success.

So I don't think Atkinson Rose did anything wrong by not offering Ms S a no win no fee option, either initially, or later on in the process when the full facts and circumstances became known.

Ms S has said Atkinson Rose didn't have a schedule of costs on their website, and this has meant she's been charged more than other clients. Employment claims are very individual and, however similar, no two are exactly alike. Because of this I wouldn't expect Atkinson Rose to publish a schedule of costs on their website, as costs can vary from claim to claim, depending on exactly what work needs to be done. For example Ms S was bringing a large number of claims against her former employer, which will take more work than say a single claim. What I would expect is they're transparent and upfront about how much they're charging, and what for. And Atkinson Rose have done this.

Atkinson Rose sent Ms S a Client Care Letter when she instructed them to act for her in May 2017. This confirmed they'd agreed to act on a fixed fee basis, charging £680 plus VAT to prepare the schedule for the tribunal; and £2,220 plus VAT to provide a barrister to represent her at the Preliminary Hearing in June 2017. They explained that their retainer would end at this point, but they could *"then consider moving forward on a different type of retainer."* They also explained that, even though this didn't apply to Ms S because she was paying a fixed fee, they charged £300 per hour for the work they did.

Atkinson Rose also said that, if Ms S terminated the retainer, or if they had to terminate it because she breached the conditions, they had the right *"to bill you on an hourly basis for the work that had been carried out."*

Ms S agreed to pay Atkinson Rose's fee by monthly instalments. And, while the original retainer ended after the first hearing, Ms S asked them to complete additional work for her – prepare a schedule of loss, arrange a barrister's attendance at the second hearing, prepare an impact statement, prepare the document disclosure bundle, update the schedule of loss and prepare a witness statement. In each instance Atkinson Rose charged a fixed fee for this work and added the agreed costs to the outstanding bill.

No new retainers were agreed for this additional work, so it's reasonable to assume that both parties were going ahead on the basis of the original retainer, which was also a fixed fee agreement, rather than under a different basis such as a no win no fee agreement.

I've noted that Atkinson Rose have referred to some figures as being plus VAT, while not referring to VAT at all on others. Ms S has commented on this, and said she thinks Atkinson Rose are claiming VAT when they're not entitled to. So she thinks they should refund the VAT she's paid back to her. But Atkinson Rose's invoices have a VAT Registration Number. And I've checked this and it's valid. So Atkinson Rose are able to charge VAT.

Where a figure is quoted plus VAT, I'd expect Atkinson Rose to add VAT to the quoted figure. But where a figure is quoted without mentioning the VAT, I'd expect the VAT to be included within the quoted figure. And, from the schedule of costs I've seen, this is the case.

But the schedule of costs also shows Atkinson Rose charged Ms S £2,220 plus VAT for a hearing scheduled for August 2017. But this hearing didn't take place and was rescheduled to November 2017. And there was a separate charge for the November hearing. As part of the complaint investigation process, I've seen that Atkinson Rose have now removed the charge for the August hearing. Which is what I'd expect them to do.

And when Ms S stopped paying the monthly instalments, she breached the agreement she had with Atkinson Rose. In doing so, under the original retainer, they had the right to charge an hourly rate basis for the work they'd done. So I don't think they've done anything wrong by telling Ms S this. But I also note that Atkinson Rose haven't altered the charging structure and are only charging the amounts originally agreed. Which I think is fair and reasonable in the circumstances. Especially as the terms of the original agreement weren't supplied to Ms S every time she agreed for Atkinson Rose to do additional work for an additional fee.

Turning to the costs Ms S has now been ordered to pay. I've also noted that, on 11 December 2017, Atkinson Rose wrote to Ms S with a hearing summary. This clearly said that, in the barrister's opinion, *"the claim was likely to fail"* and that the barrister had also told Ms S this after the hearing. They also said the barrister had recommended *"it would be sensible to make an offer of settlement now at an early stage"* but that Ms S *"did not feel she could drop the whole thing completely."*

A costs hearing took place on 19 June 2019, and I've seen the judge's decision on this. The costs claim was brought by the other side because they said Ms S *"had acted unreasonably in bringing and pursuing the claims and that she had failed to comply with tribunal orders."* In ruling on this, the judge said *"the claimant did breach an order of the tribunal to complete the table of allegations by 22 June [2017], but it was completed by 28 June, albeit not entirely satisfactorily. The tribunal does not consider such a breach should lead to a costs order."*

The judge went on to say that that Ms S behaved unreasonably by bring *“far too many allegations [and she wasn’t] able to sufficiently concentrate on the more significant matters.”* And *“she also brought unnecessary claims against individual respondents which caused extra work for the respondent’s representatives.”* The judge also said Ms S *“had no reasonable prospect of success in some parts of her claims [and] she was informed of the weakness of that claim by the respondents.”* And *“a considerable proportion of the 35 allegations of disability discrimination had no reasonable prospect of success.”*

As a result of this, Ms S was ordered to pay the other side £20,000 as a contribution towards their costs. But the judge was quite clear that the order was made because Ms S *“has acted unreasonably in pursuing these complaints.”* And the fact that the schedule was provided a week later than ordered was not a factor in the granting of a costs order. So I can’t say that Atkinson Rose’s delay in providing the schedule was any part of the reasoning why the costs order was granted. And I won’t be asking them to pay anything towards this.

Because of the above, I’m satisfied that Atkinson Rose have acted reasonably. And I won’t be asking them to do anything more. They’ve offered to waive their outstanding fees, if Ms S withdraws her complaint against the barrister with the Legal Ombudsman. While I don’t think they should be making offers conditional on withdrawing complaints with other ombudsman schemes, because I’m satisfied with how Atkinson Rose dealt with Ms S’s claim, I won’t be directing them to make any alternative offer. It’s now for Ms S to decide whether to accept this offer or not.

### **My final decision**

For the reasons explained above I don’t uphold Ms S’s complaint about Atkinson Rose LLP.

Under the rules of the Financial Ombudsman Service, I’m required to ask Ms G to accept or reject my decision before 17 December 2020.

Andrew Burford  
**Ombudsman**